

RECEIVED

1991 APR -1 PM 12:03

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

— ● —

ENROLLED

HOUSE BILL No. 2837

(By Mr. Speaker, Mr. Chambers, & Del. Burk)

[By Request of the Executive]

— ● —

Passed March 9, 1991

In Effect 90 Days From Passage

ENROLLED
H. B. 2837

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed March 9, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections eighteen, nineteen, twenty and twenty-one, all relating to the West Virginia Capital Company Act; declaration of policy and purposes; definitions; rules; standards; tax credits; recapture provisions; unqualified investments; disclosure requirements; application requirements; qualified investments; liquidation and dissolution; restrictions on investments; conflict of interest; investment reporting and record keeping; examinations; results of failure to comply; ruling procedure; effective date; transition rules; limitation on financial institutions and confidentiality.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article one be further amended by adding thereto four new sections, designated sections

eighteen, nineteen, twenty and twenty-one, all to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-2. Declaration of policy.

1 (a) The Legislature finds and declares that the West
2 Virginia economy can be strengthened by promoting
3 private investment in West Virginia businesses.

4 (b) The Legislature further finds that:

5 (1) Investment of capital in the West Virginia
6 economy can be promoted by making tax credits
7 available to taxpayers investing in West Virginia capital
8 companies;

9 (2) Demands on state revenues restrict the financial
10 ability of this state to make unlimited tax credits
11 available for investment purposes and require that this
12 state place reasonable limits on the total amount of tax
13 credits to be made available for investment incentives;

14 (3) Establishment of a tax credit program, which
15 gives priority to investments in capital companies in the
16 order in which they are qualified as such, will encourage
17 investment in West Virginia businesses; and

18 (4) The promotion of private investment in West
19 Virginia businesses will tend to reduce unemployment
20 by creating new or maintaining existing employment
21 opportunities for the citizens of this state.

§5E-1-3. Purposes.

1 (a) The purpose of this article is to promote the
2 development of the human resources and the diversifi-
3 cation of the economy of West Virginia. The investment
4 capital generated by this article must be used to
5 encourage and assist the strengthening of the economy
6 through loans, equity investments, and other business
7 transactions for purposes of developing new business
8 and industry in West Virginia, rehabilitating existing
9 business and industry, and stimulating and assisting in
10 the expansion of business activities that promote and
11 maintain the economic stability of this state by provid-

12 ing maximum opportunities for employment of West
13 Virginians and improving the standard of living of the
14 people of this state.

15 (b) This article is aimed at:

16 (1) Increasing the availability of development capital
17 in order to encourage and assist in the creation,
18 development and expansion of businesses based in West
19 Virginia;

20 (2) Developing, preserving, diversifying, expanding
21 and strengthening the agricultural, industrial and
22 business base of West Virginia's economy, particularly
23 for those businesses utilizing this state's technical,
24 managerial and research resources in domestic and
25 international markets; and

26 (3) Providing the residents of West Virginia with
27 greater opportunities to invest and participate in the
28 economic development and potential of this state.

§5E-1-4. Definitions.

1 As used in this article, the following terms have the
2 meanings ascribed to them in this section, unless the
3 context in which the term is used clearly requires
4 another meaning or a specific different definition is
5 provided.

6 (a) "Authority" means the West Virginia economic
7 development authority, provided for in article fifteen,
8 chapter thirty-one of this code.

9 (b) "Capital base" means equity capital or net worth.

10 (c) "Certified West Virginia capital company" means:

11 (1) A West Virginia business development corporation
12 created pursuant to article fourteen, chapter thirty-one
13 of this code; or

14 (2) A profit or nonprofit entity organized and existing
15 under the laws of this state, created for the purpose of
16 making venture or risk capital available to qualified
17 investments, that has been certified by the authority.

18 (d) "Qualified investment" means a debt or equity

19 financing of a West Virginia business, but only if the
20 business is engaged in one or more of the following
21 activities: Manufacturing; agricultural production or
22 processing; forestry production or processing; mineral
23 production or processing, except for conventional oil and
24 gas exploration; service industry; transportation;
25 research and development of products or processes
26 associated with any of the activities previously enumer-
27 ated above; tourism; computer software development
28 companies engaged in the creation of computer soft-
29 ware; and wholesale or retail distribution activities
30 within the state. The investment by a West Virginia
31 capital company in purchases of property to be leased
32 by it, as lessor, through a capital lease to a West
33 Virginia business lessee engaged in one of the above
34 enumerated activities is a qualified investment.

35 (e) "Qualified West Virginia capital company" means
36 a West Virginia capital company that has been desig-
37 nated by the authority as a qualified capital company
38 under the provisions of section six of this article.

39 (f) "State" means the state of West Virginia.

40 (g) "Capital lease" means a lease meeting one or more
41 of the following criteria:

42 (1) The lease transfers ownership of the property to
43 the lessee at the end of the lease term by the lessee's
44 exercise of a purchase option which is de minimis in
45 amount; or

46 (2) The lease term is equal to seventy-five percent or
47 more of the estimated economic life of the leased
48 property. However, if the beginning of the lease term
49 falls within the last twenty-five percent of the total
50 estimated economic life of the leased property, including
51 earlier years of use, this criterion shall not be used; or

52 (3) Under generally accepted accounting principles,
53 the lessee cannot treat payments to the capital company
54 as payments under an operating lease; or

55 (4) For federal income tax purposes, the parties are
56 required to treat payments as amortization of principal
57 and interest.

§5E-1-5. Rules.

1 The authority shall promulgate rules in accordance
2 with article three, chapter twenty-nine-a of this code, to
3 carry out the policy and purposes of this article, to
4 provide any necessary clarification of the provisions of
5 this article, and to efficiently provide for the general
6 administration of this article.

§5E-1-6. Qualification of West Virginia capital companies.

1 (a) The authority shall qualify West Virginia capital
2 companies commencing after the effective date of this
3 article. A company seeking to be qualified as a West
4 Virginia capital company must make written applica-
5 tion to the authority on forms provided by the authority.
6 The application must contain the information required
7 by section ten of this article. Further, the application
8 must specify the level of capitalization of the company.

9 (b) The application shall set forth the applicant's
10 purpose.

11 (c) The authority may certify West Virginia capital
12 companies in existence after the first day of July, one
13 thousand nine hundred eighty-six.

14 (d) An applicant shall establish an escrow account
15 located in West Virginia, into which account funds
16 invested in the applicant shall be deposited and held for
17 the period of time between their receipt by the applicant
18 and the designation of the applicant as a qualified
19 company. Such funds shall not be invested by the
20 applicant until such designation by the authority. In the
21 event the authority does not designate the applicant a
22 qualified company, such funds shall be returned to the
23 investors, if requested by the investors.

24 (e) A West Virginia capital company may not qualify
25 or be issued a certification under this article unless the
26 company holds a valid business registration certificate
27 issued pursuant to article twelve, chapter eleven of this
28 code. A company exempt from registration under said
29 article twelve may qualify and be certified under this
30 article upon proof of its exemption.

§5E-1-7. Minimum standards of qualified West Virginia capital companies.

1 The following requirements apply to all qualified
2 companies:

3 (a) A qualified company shall be a certified West
4 Virginia capital company.

5 (b) A qualified company shall have a reasonably
6 accessible business office located within the state of
7 West Virginia, which office shall have a listed telephone
8 number and shall be open to the public during normal
9 business hours.

10 (c) A qualified company shall maintain all of its
11 capital base, except that which has been invested to
12 meet the purposes of this article, in bank accounts and
13 financial institutions which are located in the state of
14 West Virginia, or in such other interest bearing
15 instruments with a maturity of less than one year which
16 are obtained from and managed by a West Virginia
17 corporation.

18 (d) A qualified company shall have a capital base of
19 at least one million dollars, but not greater than four
20 million dollars, which capital base must be raised after
21 the first day of July, one thousand nine hundred eighty-
22 six. If the amount of the investment in a qualified
23 company in any fiscal year exceeds four million dollars,
24 such amount in excess of four million dollars is not
25 eligible for tax credits under this article.

26 (e) No more than twenty-five percent of each separate
27 capital base of a qualified company shall be in the form
28 of full recourse, interest bearing demand notes, backed
29 by an irrevocable letter of credit or bond from a
30 reputable source, as determined by the authority.

31 (f) A qualified company's stated purpose must be to
32 encourage and assist in the creation, development or
33 expansion of West Virginia businesses.

34 (g) A qualified company, seeking to establish a
35 separate capital base or increase its capital base, shall
36 establish an escrow account located in West Virginia,

37 into which account funds invested in the qualified
38 company shall be deposited and held for the period of
39 time between their receipt by the qualified company and
40 the designation as qualified of a separate capital base
41 or an increase to capital base. Such funds shall not be
42 invested by the qualified company until such designa-
43 tion by the authority. In the event the authority does not
44 designate as qualified a separate capital base or an
45 increase to capital base, such funds shall be returned to
46 the investors, if requested by the investors.

47 (h) A qualified company, when soliciting funds for its
48 capital base, must disclose that no tax credit for the
49 investor's investment will be available until the author-
50 ity designates as qualified a capital base or an increase
51 to capital base and issues to the qualified company
52 notice of such qualification and a certificate of tax
53 credit.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be increased
4 pursuant to rule of the authority.

5 (b) The total credits authorized by the authority for
6 all companies may not exceed a total of ten million
7 dollars each fiscal year. The authority shall allocate
8 these credits to qualified companies in the order that
9 said companies are qualified.

10 (c) Any investor, including an individual, partnership
11 or corporation who makes a capital investment in a
12 qualified West Virginia capital company is entitled to
13 a tax credit equal to fifty percent of the investment. The
14 credit allowed by this article shall be taken after all
15 other credits allowed by chapter eleven of this code. It
16 shall be taken against the same taxes and in the same
17 order as set forth in subsections (c) through (i), section
18 five, article thirteen-c, chapter eleven of this code. The
19 credit for investments by a partnership or by a
20 corporation electing to be treated as a Subchapter S
21 corporation may be divided pursuant to election of
22 partners or shareholders.

23 (d) The tax credit allowed under this section is to be
24 credited against the taxpayer's tax liability for the
25 taxable year in which the investment in a qualified West
26 Virginia capital company is made. If the amount of the
27 tax credit exceeds the taxpayer's tax liability for the
28 taxable year, the amount of the credit which exceeds the
29 tax liability for the taxable year may be carried to
30 succeeding taxable years until used in full, or until
31 forfeited: *Provided*, That (i) tax credits may not be
32 carried forward beyond fifteen years, and (ii) tax credits
33 may not be carried back to prior taxable years. Any tax
34 credit remaining after the fifteenth taxable year is
35 forfeited.

36 (e) The tax credit provided for in this section is
37 available only to those taxpayers whose investment in a
38 qualified West Virginia capital company occurs after
39 the first day of July, one thousand nine hundred eighty-
40 six.

41 (f) The tax credit allowed under this section may not
42 be used against any liability the taxpayer may have for
43 interest, penalties or additions to tax.

44 (g) Notwithstanding any provision in this code to the
45 contrary, the tax commissioner shall publish in the state
46 register the name and address of every taxpayer, and
47 the amount, by category, of any credit asserted under
48 this article for any tax year beginning on or after the
49 first day of January, one thousand nine hundred ninety-
50 one. The categories by dollar amount of credit received,
51 shall be as follows:

52 (1) More than \$1.00, but not more than \$50,000;

53 (2) More than \$50,000, but not more than \$100,000;

54 (3) More than \$100,000, but not more than \$250,000;

55 (4) More than \$250,000, but not more than \$500,000;

56 (5) More than \$500,000, but not more than \$1,000,000;

57 (6) More than 1,000,000.

§5E-1-9. Recaptures; unqualified investments.

1 A taxpayer receiving a credit hereunder is not subject

2 to a recapture provision for any credit claimed by the
3 taxpayer but the company is subject to the civil penalty
4 provided for in subsection (e), section twelve of this
5 article.

§5E-1-10. Application requirements.

1 Each company shall make application to the authority
2 on forms provided therefor, which shall set forth:

3 (1) Capitalization level of capital company;

4 (2) Purpose of the company;

5 (3) Names of investors;

6 (4) A process for disclosing to investors the tax credit
7 available pursuant to this article. Such disclosure shall
8 clearly set forth that no tax credit will be available until
9 the qualification of said company shall be granted by the
10 authority and the disclosure of immunity of the state for
11 damages is provided to said investors; and

12 (5) The location of the escrow account which has been
13 established for investors for the period of time between
14 the investment and the qualification of the capital
15 company by the authority.

**§5E-1-12. Qualified investments; liquidation or
dissolution.**

1 (a) A qualified West Virginia capital company must
2 use its capital base to make qualified investments
3 according to the following schedule:

4 (1) At least thirty-five percent of its capital base
5 within the first year of the date on which the capital
6 company was designated as qualified by the authority;

7 (2) At least fifty-five percent of its capital base within
8 two years of the date on which the capital company was
9 designated as qualified by the authority; and

10 (3) At least seventy-five percent of its capital base
11 within three years of the date on which the capital
12 company was designated as qualified by the authority.

13 (b) A qualified West Virginia capital company shall
14 maintain its qualified investments for a period of at

15 least five years, except that a qualified West Virginia
16 capital company receiving repayment or return of a
17 qualified investment (exclusive of interest, dividends or
18 other earnings on such investment) shall reinvest the
19 company's repaid or returned cost basis in the invest-
20 ment in a qualified investment which remains outstand-
21 ing for a period of time at least equal to the remainder
22 of the initial five-year term, such reinvestment to be
23 made within twenty-four months from the date of
24 repayment or return, unless a waiver is obtained from
25 the authority prior to the end of said twenty-four month
26 period: *Provided*, That such returned amounts may be
27 accumulated for six months before the aforesaid twenty-
28 four month period commences.

29 (c) A qualified West Virginia capital company may be
30 dissolved or liquidated only after notice and approval of
31 such dissolution or liquidation by the authority. The
32 authority shall provide by rule a procedure for applica-
33 tion for approval to dissolve or liquidate a capital
34 company and such approval shall not be unreasonably
35 withheld, the intention of this provision being to ensure
36 compliance with subsection (b) of this section. Unless
37 waived by the authority, no dissolution or liquidation of
38 any qualified West Virginia capital company may be
39 made if such dissolution or liquidation would cause the
40 provisions of subsection (b) of this section to be violated.

41 (d) The authority shall annually audit the certified
42 audit of each qualified company, as required by section
43 sixteen of this article, and the results of said audit shall
44 be used to notify the tax commissioner of any companies
45 that are not in compliance with this section.

46 (e) A qualified West Virginia capital company that
47 fails to make or maintain qualified investments pursu-
48 ant to this section shall pay to the tax commissioner a
49 penalty equal to all of the tax credits allowed to the
50 taxpayers investing in said company with interest at the
51 rate of one and one-half percent per month, compounded
52 monthly, from the date the tax credits were certified as
53 allocated to the qualified West Virginia capital com-
54 pany. The tax commissioner shall give notice to the
55 company of any penalties under this section. The tax

56 commissioner may abate said penalty upon written
57 request if the capital company establishes reasonable
58 cause for the failure to make qualified investments. The
59 tax commissioner shall deposit any amounts received
60 under this subsection in the state general fund.

§5E-1-13. Restrictions on investment.

1 (a) No more than thirty percent of the equity raised
2 by a West Virginia capital company under this article
3 may be invested in any one West Virginia business.

4 (b) No portion of the capital base of a West Virginia
5 capital company may be invested in a business that is
6 the “alter ego” of that West Virginia capital company.
7 Furthermore, after the effective date of this article no
8 investments shall be made by a West Virginia capital
9 company to a business that is an “alter ego” of the West
10 Virginia Capital Company: *Provided*, That this restric-
11 tion on investments shall not effect any contracts
12 entered into prior to the effective date of this article. For
13 purposes of this subsection, a business is an “alter ego”
14 of the West Virginia capital company if any one or more
15 of the following criteria are satisfied:

16 (1) The ownership of the business is substantially
17 related to the ownership of the capital company; or

18 (2) The board of directors of the business is controlled
19 by the capital company: *Provided*, That a capital
20 company may control the board of directors of a
21 business if control consists of no more than a simple
22 majority of the board.

23 (c) No owner, director, officer or employee of a West
24 Virginia capital company may occupy any management
25 position in any business in which that capital company
26 has invested, unless such person is filling that manage-
27 ment position in a effort to remedy problems arising
28 from a lack of profitability of the business or from
29 dishonesty of the persons otherwise managing the
30 business.

31 (d) Each qualified West Virginia capital company
32 may not invest any of its capital base in any of the
33 following businesses:

- 34 (1) Banks;
- 35 (2) Savings and loans association;
- 36 (3) Credit companies;
- 37 (4) Financial or investment advisors;
- 38 (5) Brokerage or financial firms;
- 39 (6) Other capital companies;
- 40 (7) Charitable and religious institutions;
- 41 (8) Conventional oil and gas exploration;
- 42 (9) Insurance companies;
- 43 (10) Residential housing or development; or
- 44 (11) Any other business which the authority deter-
- 45 mines to be against the public interest, the purposes of
- 46 this article or in violation of any law.
- 47 The authority, by the promulgation of rules in
- 48 accordance with section five of this article, may
- 49 designate, in addition to those listed in this subsection,
- 50 other businesses in which capital companies may not
- 51 invest any of their capital base.

§5E-1-14. Conflict of interest.

- 1 No officer, member or employee of the authority shall
- 2 be financially interested, directly or indirectly, in any
- 3 capital company.

§5E-1-15. Investment reporting and record keeping.

- 1 (a) Each qualified West Virginia capital company
- 2 shall report, at a minimum, to the tax commissioner and
- 3 the authority on a semiannual basis:
- 4 (1) The name of each investor in the qualified West
- 5 Virginia capital company who is entitled to a tax credit;
- 6 (2) The amount of each investor's investment in the
- 7 capital company;
- 8 (3) The amount of the tax credit allowed to the
- 9 investor and the date on which the qualified investment
- 10 that generated the tax credit was made;

- 11 (4) All qualified investments the company has made;
- 12 (5) An affidavit for each business invested in, pre-
13 pared by any officer or partner of each such respective
14 business which sets forth (A) that it is a business located
15 in or principally based in West Virginia; (B) that more
16 than fifty percent of its assets, operations and employees
17 are located in West Virginia; and (C) a brief description
18 of the activities the business is engaged in; and
- 19 (6) An affidavit pertaining to each business invested
20 in, prepared by an officer, partner or trustee of the
21 qualified West Virginia capital company which demon-
22 strates with respect to such business (A) that the
23 business invested in is not a business engaged in an
24 activity prohibited by subsection (d), section thirteen of
25 this article; (B) that more than fifty percent of the
26 assets, operations and employees of the business invested
27 in are located in West Virginia; and (C) that, if a
28 qualified investment, the business invested in is engaged
29 in activities that meet the requirements of a qualified
30 investment as listed in subdivision (d), section four of
31 this article.
- 32 (b) The authority, by the promulgation of rules, in
33 accordance with section five of this article, may require
34 that each qualified West Virginia capital company, in
35 its semiannual report to the tax commissioner and the
36 authority, disclose information in addition to the
37 disclosures required by subsection (a) of this section.
- 38 (c) The company shall provide each investor in a
39 qualified West Virginia capital company with a certif-
40 icate authorizing the tax credits, and a true copy of the
41 certificate shall be submitted with each taxpayer's tax
42 return claiming a credit under section eight of this
43 article.

§5E-1-16. Examination.

- 1 (a) Annually each qualified capital company shall
2 cause its books and records to be audited by an
3 independent certified public accountant in accordance
4 with generally accepted auditing and accounting
5 principles. In addition to the performance of a financial

6 audit, the audit shall address the methods of operation
7 and conduct of the business of the West Virginia capital
8 company to determine compliance with this article and
9 that the funds received by the company have been
10 invested within the time limits required by this article.
11 Upon completion, a copy of the audit report shall be
12 certified and sent to the authority.

13 (b) The authority may examine, under oath, any of the
14 officers, directors, agents, employees or investors of a
15 West Virginia capital company regarding the affairs
16 and business of the company. The authority may issue
17 subpoenas and subpoenas duces tecum and administer
18 oaths. Refusal to obey such a subpoena or subpoena
19 duces tecum may at once be reported to the circuit court
20 of the county in which the company is located or the
21 persons subpoenaed reside and the circuit court shall
22 enforce obedience to the subpoena or subpoena duces
23 tecum in the manner provided by law for compliance
24 with a subpoena or subpoena duces tecum issued by a
25 circuit court of this state.

26 (c) In addition to the audits herein required, the
27 authority and the tax commissioner may jointly audit
28 any capital company or number of capital companies in
29 any year on a random basis, or for cause, or for any
30 other basis the authority or the tax commissioner may
31 select. The tax commissioner may also audit any
32 company or business in which a capital company has
33 made an investment, or which a capital company
34 proposes to invest, on a random audit selection basis, or
35 for cause, or on any other basis the tax commissioner
36 may select. Nothing herein shall be construed to
37 prohibit the tax commissioner from conducting any
38 audit relating to the administration or enforcement of
39 the tax laws of this state which the tax commissioner
40 may, in his discretion, determine to be appropriate.

§5E-1-17. Failure to comply.

1 (a) If the examination conducted pursuant to section
2 sixteen discloses that a West Virginia capital company
3 is not in compliance with the provisions of this article,
4 the authority may exercise any of the powers necessary

5 and appropriate to protect the authority's interest.

6 (b) The authority shall give a West Virginia capital
7 company written notice of any inadequacies in its
8 compliance with the provisions of this article, and
9 specify a period of time the company has to redress such
10 inadequacies. Failure within said time period to make
11 corrections will result in further action by the authority
12 pursuant to this section.

§5E-1-18. Ruling procedure.

1 (a) The authority may issue an informal ruling as to
2 its position on the application of this article and the
3 rules promulgated thereunder to a stated transaction or
4 event.

5 (b) Such rulings will only be issued after receipt of
6 a written request and payment of a nonrefundable filing
7 fee.

8 (c) Such rulings shall not constitute binding prece-
9 dent, and are issued solely for the guidance of those
10 persons requesting the ruling. Such rulings may be
11 modified prospectively at any time with notice to the
12 recipient of the ruling at said recipient's last address
13 known to the authority and may be published or
14 released by the authority with facts or characteristics
15 identifying the person or persons requesting the ruling
16 omitted or modified.

17 (d) Notwithstanding any provision of this section,
18 rulings relating to issues of taxation may be issued only
19 by the state tax commissioner, and may not be issued
20 by the authority.

§5E-1-19. Effective date; transition rules.

1 (a) The provisions of subsection (d), section eight of
2 this article relating to credit carryback that were in
3 effect on the first day of January, one thousand nine
4 hundred ninety, apply to any credit earned prior to the
5 effective date of the amendments to that subsection,
6 notwithstanding the fact that the taxpayer's taxable
7 year does not end until a date on or after the effective
8 date of the amendments to that subsection. The provi-

9 sions of subsections (d) and (f), section eight of this
10 article, as amended, prohibiting credit carryback and
11 application of credit against interest, penalties and
12 additions to tax apply to any credit earned on or after
13 the effective date of the amendments to that subsection.

14 (b) The provisions of section twelve of this article
15 relating to minimum investment time limitations that
16 were in effect on the first day of January, one thousand
17 nine hundred ninety, apply to any capital base qualified
18 prior to the effective date of the amendments to that
19 subsection. The provisions of subsection (a), subsection
20 (b), subsection (c), section twelve of this article, as
21 amended, apply to any capital base qualified on a date
22 on or after the effective date of the amendments to that
23 section.

24 (c) The provisions of section twenty of this article
25 relating to financial institutions are applicable to
26 investments by financial institutions made on a date on
27 or after the effective date of that section. Investments
28 made on a date prior to the effective date of that section
29 remain unaffected by the provisions of that section.

30 (d) The provisions of subsections (b) through (d),
31 section thirteen of this article relating to investment
32 restrictions are applicable to investments made on a
33 date on or after the effective date of those subsections.
34 Investments made on dates prior to the effective date of
35 those subsections remain unaffected by the provisions of
36 those subsections.

37 (e) As used in this section "amendments" means
38 changes made in this article during the regular session
39 of the Legislature in the year one thousand nine hundred
40 ninety-one.

§5E-1-20. Limitation on financial institutions.

1 Not more than forty-nine percent of the total capital
2 base of any capital company may be owned by banks,
3 savings and loan associations, savings banks or other
4 financial institutions, or any affiliate thereof, as
5 investors. No officer, employee or director of any such
6 financial institution may serve on the board of any

7 capital company formed under the provisions of this
8 article.

§5E-1-21. Confidentiality.

1 (a) The authority shall, by the promulgation of rules,
2 determine which records, reports, or information
3 obtained from any person or entity under this article are
4 to be treated by the agency as confidential and not
5 subject to disclosure, except as hereinafter provided in
6 subsection (c) of this section: *Provided*, That notwith-
7 standing any other provision of law to the contrary, the
8 authority shall make available to the public the name
9 of any business or company receiving a qualified
10 investment from a capital company and the name of the
11 capital company so investing.

12 (b) Any other records, reports, or information ob-
13 tained from any person or entity under this article shall
14 be made available to the public, except that upon a
15 showing at the time of submission, satisfactory to the
16 authority, by any person or entity, that records, reports
17 or information, or a particular part thereof, to which the
18 authority or any officer, employee or representative
19 thereof has or will have access under this section, if
20 made public, would divulge information entitled to
21 protection under Section 1905 of Title 18 of the United
22 States Code as said section reads on the twentieth day
23 of December, one thousand nine hundred ninety, such
24 information or particular portion thereof is confidential
25 in accordance with the purposes of this section. In
26 submitting data under this article, a person required to
27 provide such data may designate the data which he or
28 she believes is entitled to protection under this subsec-
29 tion and submit such designated data separately from
30 other data submitted under this article. A designation
31 under this subsection shall be made in writing and in
32 such manner as the authority may prescribe.

33 (c) Notwithstanding the foregoing provisions of this
34 section, any record, report, document, or information
35 may be disclosed to other officers, employees, or
36 authorized representatives of this state charged with
37 administering the provisions of this article and may be

38 disclosed pursuant to proceeding under subsection (b),
39 section sixteen of this article. Notwithstanding the
40 previous sentence, and notwithstanding any provision of
41 this article, the provisions of this code regarding
42 confidentiality and the disclosure of tax returns and tax
43 information, including specifically section five-d, article
44 ten, chapter eleven of this code apply to the authority,
45 its agents and employees and to information submitted
46 to the authority under this article.

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

Homer Hecks
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harold E. Adams
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Keith Burdette
.....
President of the Senate

Pat C. Abernethy
.....
Speaker of the House of Delegates

The within *is approved* this the *1st*
day of *April*, 1991.

Yaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/22/91

Time 5:10 pm