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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992



ENROLLED

SENATE BILL NO. 575

(By Senator Minard)



PASSED March 4, 1992

In Effect from Passage

ENROLLED
Senate Bill No. 515
(BY SENATOR MINARD)

[Passed March 4, 1992; in effect from passage.]

AN ACT to repeal sections five, six, seven, eight, ten, twelve, fifteen, seventeen, twenty, twenty-five and twenty-eight, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, eleven, thirteen, fourteen, sixteen, eighteen, nineteen, twenty-four, twenty-six and twenty-seven of said article, all relating to industrial banks and industrial loan companies; redefining terms; eliminating industrial banks; organizational requirements of industrial loan companies; powers of industrial loan companies; eliminating the ability of industrial loan companies to issue certificates of indebtedness to the public or buy and sell bonds; restricting the practices of industrial loan companies; permitting industrial loan companies to hold real estate for ten years; requiring supervision of the banking commissioner; annual assessments by the commissioner; branch offices permitted; penalties for violations; annual meetings and reports; bonds for directors; personal liability of directors for manager's acts; rights of stockholders; advertising requirements and restrictions; and powers of the banking commissioner.

Be it enacted by the Legislature of West Virginia:

That sections five, six, seven, eight, ten, twelve, fifteen, seventeen, twenty, twenty-five and twenty-eight, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, eleven, thirteen, fourteen, sixteen, eighteen, nineteen, twenty-four, twenty-six and twenty-seven of said article be amended and reenacted, all to read as follows:

ARTICLE 7. INDUSTRIAL LOAN COMPANIES.

§31-7-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Industrial Loan Company Act".

§31-7-2. Construction of article; general corporation laws applicable.

- 1 (a) Except as otherwise specified herein the provi-
- 2 sions of chapter thirty-one-a of this code, insofar as the
- 3 same relates to the inspection, examination, supervi-
- 4 sion, regulation and control of banking institutions,
- 5 including, but not limited to, all of the penalty
- 6 provisions contained in said chapter, shall apply to
- 7 industrial loan companies organized pursuant to this
- 8 article to the extent that the provisions of this article
- 9 and the provisions of said chapter are not inconsistent.
- 10 To the extent of any inconsistencies between the
- 11 provisions of this article and provisions of said chapter,
- 12 the provisions of this article shall prevail to the extent
- 13 of such inconsistencies.
- 14 (b) The general corporation laws of the state, includ-
- 15 ing the provisions of article one of this chapter, shall
- 16 govern industrial loan companies.

§31-7-3. Definitions.

- 1 As used in this article, unless the context otherwise
- 2 requires a different meaning, the term:
 - 3 (a) "Commissioner" or "commissioner of banking"
 - 4 means the commissioner of banking of West Virginia
 - 5 and includes the division of banking of West Virginia;
 - 6 (b) "Deposit" or "deposits" means the unpaid

7 balance of money or its equivalent received or held in
8 the usual course of business and for which there is
9 given or there is obligated to give credit, either
10 conditionally or unconditionally, to a checking, sav-
11 ings, time or thrift account, or which is evidenced by
12 a certificate of deposit; and

13 (e) "Industrial loan company" means any corpora-
14 tion formed under the provisions of this article with
15 the approval of the commissioner of banking of this
16 state.

**§31-7-4. Incorporators; name; minimum capital stock; voting
rights of classes of stock; common stock to be
paid in before business commenced; use of
certain words in corporate name prohibited.**

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

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

1 (a) In addition to the general powers conferred upon
2 corporations by the laws of this state, each industrial
3 loan company shall have power to exercise by its
4 board of directors or duly authorized officers or

5 agents, subject to law, all such powers as shall be
6 necessary to:

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

10 (2) Demand and receive for loans or for notes, bills
11 or evidences of debt discounted or purchased, such
12 rate of interest as may be agreed upon by the parties,
13 not exceeding the lawful rate of interest, and it shall
14 be lawful to receive such interest in advance. This
15 section does not limit or restrict the manner of
16 calculating the loan finance charge, whether by way of
17 add-on, discount or otherwise, so long as the rate of
18 loan finance charge does not exceed that permitted by
19 this section;

20 (3) Charge for a loan made pursuant to this section,
21 one dollar for each fifty dollars, or fraction thereof,
22 loaned, for expenses including any examination or
23 investigation of the character and circumstances of the
24 borrower, comaker or surety, and the drawing and
25 taking the acknowledgment of necessary papers, or
26 other expenses, incurred in making the loan. No
27 additional charge shall be made except to reimburse
28 the corporation for money actually expended for
29 additional service actually rendered the borrower. No
30 charge shall be collected unless a loan shall have been
31 made as the result of such examination or
32 investigation;

33 (4) Purchase, hold and convey real estate as follows:

34 (A) Such as shall be necessary for the convenient
35 transaction of its business;

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

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

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

43 (b) Industrial loan companies shall not purchase,
 44 hold or convey any real estate in any other case or for
 45 any other purpose whatever. Real estate shall be
 46 conveyed only by authority of the board of directors of
 47 any such industrial loan company. No real estate
 48 acquired in the cases contemplated in paragraphs (B), ^{DEF.}
 49 (C) and (D), subdivision (4), ~~of this subsection~~ ^{(a) of this section} shall be
 50 held for a longer time than ten years, unless such
 51 period shall be extended by the commissioner of
 52 banking.

53 (c) An industrial loan company shall not:

54 (1) Accept or receive deposits or sell or offer for sale
 55 its secured or unsecured evidences or certificates of
 56 indebtedness;

57 (2) Pay any fees, bonuses, commissions, rewards or
 58 other consideration to any person, firm or corporation
 59 for the privilege of using any plan of operation,
 60 scheme or device for the organization or carrying on
 61 of business under this article, or the use of any name,
 62 trademark or copyright to be so used.

§31-7-13. Supervision and control.

1 (a) Every industrial loan company shall be subject to
 2 the inspection, examination, supervision, jurisdiction
 3 and control of the commissioner. Where forty percent
 4 or more of the common stock of any industrial loan
 5 company is owned or is held in trust for the benefit of
 6 or by any other single firm, corporation, partnership
 7 or association, such other firm, corporation, partner-
 8 ship or association shall also be subject to the same
 9 jurisdiction and powers of inspection, examination,
 10 supervision and control of the commissioner, as if such
 11 other firm, corporation, partnership or association
 12 were an industrial loan company.

13 (b) The commissioner of banking shall charge and
 14 collect from each industrial loan company and pay into
 15 a special revenue account for the department of
 16 banking an annual assessment payable on the first day
 17 of July, computed upon the total assets of the indus-
 18 trial loan company shown on the report of condition of

19 the industrial loan company as of the last business day
20 in December of the previous year as is set out in
21 section eight, article two, chapter thirty-one-a of this
22 code.

**§31-7-14. Branch industrial loan company permitted;
penalties.**

1 (a) No industrial loan company shall install or
2 maintain any branch industrial loan company, unless
3 it has applied for and received a branch office certifi-
4 cate from the commissioner. Application for a branch
5 office certificate shall be filed in duplicate with the
6 commissioner, on forms prescribed by the commis-
7 sioner, accompanied by an examination and investiga-
8 tion fee of one thousand dollars payable to the com-
9 missioner. The provision of section five, article two,
10 chapter thirty-one-a of this code, insofar as the same
11 relates to financial institutions, other than banking
12 institutions, shall apply to the application and issuance
13 of a branch office certificate or license by the commis-
14 sioner to an industrial loan company.

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

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

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

13 (b) In all elections of directors of the corporation

14 each stockholder shall have the right to cast one vote
15 for each share of stock owned by him and entitled to
16 vote, and he may cast the same in person or by proxy,
17 for as many persons as there are directors to be
18 elected, or he may cumulate such votes and give one
19 candidate as many votes as the number of directors to
20 be elected multiplied by the number of his shares of
21 stock shall equal; or he may distribute them on the
22 same principle among as many candidates and in such
23 manner as he may desire, and the directors shall not
24 be elected in any other manner, and on any other
25 question to be determined by a vote of shares at any
26 meeting of stockholders each stockholder shall be
27 entitled to one vote for each share of stock owned by
28 him and entitled to vote, and he may exercise this
29 right in person or by proxy, but if by proxy, in no
30 instance can it be voted in any meeting other than
31 which it was first intended.

**§31-7-18. Chief executive and other officers to be bonded;
personal liability of directors for manager's
defalcation.**

1 The directors of every industrial loan company shall
2 require the manager or other chief executive officer
3 appointed by them in lieu of a manager, before he
4 performs or enters upon any duties as such manager
5 or chief executive officer, to give a bond or bonds,
6 with a surety company authorized to transact business
7 in this state as surety thereon, the amount to be fixed
8 by them, but in no case shall the penalty be less than
9 five thousand dollars. Other officers and personnel are
10 to be bonded in amounts commensurate with their
11 duties and responsibilities, to be fixed by the board of
12 directors, and all bonds are to be approved by the
13 commissioner of banking and a copy filed with his
14 department; and it shall be the duty of the directors,
15 as often as once in every year, to pass upon the
16 sufficiency of such bond or bonds, and if insufficient,
17 to require without delay new and additional bonds and
18 securities to be given. If the directors shall fail to
19 perform any or all of the requirements of this section,
20 they shall be jointly and severally liable to the

21 industrial loan company, as the case may be, to the
22 extent of any defalcation of or deficiency in the funds
23 of company created or caused by such manager, not in
24 excess of the penalty of his bond, the same to be
25 recovered by such industrial loan company in any
26 court of competent jurisdiction of this state.

§31-7-19. List of stockholders; right of inspection.

1 The president, manager or treasurer of every indus-
2 trial loan company shall at all times cause to be kept
3 a true and accurate list of the names of stockholders
4 of record, with the amount of stock held by each,
5 which list shall at all times during business hours be
6 open to the inspection of any stockholder or to the
7 inspection of the commissioner or his duly authorized
8 representative or to the authorized personnel or
9 representatives of the federal deposit insurance
10 corporation.

§31-7-24. Advertising requirements and prohibitions.

1 (a) An industrial loan company shall not advertise
2 itself as a bank nor shall any of its advertisements,
3 irrespective of the media used, contain the word or
4 term "bank", "banker", "banking company", "bank-
5 ing association", "bankers association", "savings bank"
6 or "trust company".

7 (b) An industrial loan company shall not use in any
8 of its advertisements, signs, displays, stationery or
9 documents nor in any other manner use any symbol,
10 device, trademark or seal which is alike or deceptively
11 similar to any device, symbol, trademark, or seal of
12 the federal deposit insurance corporation or of any
13 other federal agency or of any other corporation
14 authorized to transact business in this state. Any such
15 symbol, device, trademark or seal proposed to be
16 adopted or used by any industrial loan company shall,
17 prior to its adoption or use, be approved in writing by
18 the commissioner.

§31-7-26. Rules and regulations.

1 The commissioner may, from time to time, adopt
2 and promulgate such rules as are deemed necessary

3 and appropriate to carry into effect the provisions of
4 this article in accordance with the provisions of
5 chapter thirty-one-a of this code. All such rules shall
6 be adopted and promulgated pursuant to the provi-
7 sions of chapter twenty-nine-a of this code.

**§31-7-27. Additional powers and duties of the commissioner;
fees; powers of the board; appeals and judi-
cial review.**

1 Except as may be inconsistent with the provisions of
2 this article, all of the duties, powers and authority
3 vested in the commissioner of banking pursuant to the
4 provisions of chapter thirty-one-a of this code shall
5 apply to industrial loan companies. Appeals from any
6 orders or actions of the commissioner or judicial
7 review thereof shall be in the same manner as may be
8 prescribed in chapter twenty-nine-a of this code.

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

Forner Heck
.....
Chairman Senate Committee

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

Originated in the Senate.

In effect from passage.

Darrell E. Adams
.....
Clerk of the Senate

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

Bill Fardette
.....
President of the Senate

Bob Cole
.....
Speaker House of Delegates

The within is approved this the *17th*.....
day of *March*....., 1992.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/11/92

Time 3:40 pm