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SECRETARY OF STATE

## WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 2249

(By Delegate s. *Williams, Carper, Phillips,  
H. White, Rutledge and Harrison*)

— ● —

Passed *April 8,* ..... 1993

In Effect *Ninety Days From* ..... Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2249**  
(By DELEGATES WILLIAMS, CARPER, PHILLIPS, H. WHITE,  
RUTLEDGE AND HARRISON)

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[Passed April 8, 1993; in effect ninety days from passage.]

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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 the borrowing by an officer or director of any banking institution or by the commissioner of banking or any employee of the department of banking.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-six, article four, chapter thirty-one-a 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 outstand-  
3 ing at one time and not fully secured, as determined in  
4 a manner consistent with subdivision (2) of this subsec-  
5 tion, by collateral having a market value at least equal  
6 to the amount of the loan or extension of credit shall not  
7 exceed fifteen percent of the unimpaired capital and

8 unimpaired surplus of that state-chartered banking  
9 institution.

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

21 (3) For the purposes of this subsection:

22 (A) The term "loans and extensions of credit" shall  
23 include all direct or indirect advances of funds to a  
24 person made on the basis of any obligation of that person  
25 to repay the funds or repayable from specific property  
26 pledged by or on behalf of the person and to the extent  
27 specified by the commissioner of banking, such terms  
28 shall also include any liability of a state-chartered  
29 banking institution to advance funds to or on behalf of  
30 a person pursuant to a contractual commitment; and

31 (B) The term "person" shall include an individual,  
32 partnership, society, association, firm, institution,  
33 company, public or private corporation, state, govern-  
34 mental agency, bureau, department, division or instru-  
35 mentality, political subdivision, county commission,  
36 municipality, trust, syndicate, estate or any other legal  
37 entity whatsoever, formed, created or existing under the  
38 laws of this state or any other jurisdiction.

39 (4) The limitations contained in this subsection shall  
40 be subject to the following exceptions:

41 (A) Loans or extensions of credit arising from the  
42 discount of commercial or business paper evidencing an  
43 obligation to the person negotiating it with recourse  
44 shall not be subject to any limitation based on capital  
45 and surplus;

46 (B) The purchase of bankers' acceptances of the kind

47 described in section thirteen of the Federal Reserve Act  
48 and issued by other banks shall not be subject to any  
49 limitation based on capital and surplus;

50 (C) Loans and extensions of credit secured by bills of  
51 lading, warehouse receipts, or similar documents  
52 transferring or securing title to readily marketable  
53 staples shall be subject to a limitation of thirty-five  
54 percent of capital and surplus in addition to the general  
55 limitations if the market value of the staples securing  
56 each additional loan or extension of credit at all times  
57 equals or exceeds one hundred fifteen percent of the  
58 outstanding amount of such loan or extension of credit.  
59 The staples shall be fully covered by insurance when-  
60 ever it is customary to insure such staples;

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

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

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

82 (G) Loans or extensions of credit to any banking  
83 institution or to any receiver, conservator or other agent  
84 in charge of the business and property of such banking  
85 institution or other federally insured depository institu-  
86 tion, when such loans or extensions of credit are

87 approved by the commissioner of banking, shall not be  
88 subject to any limitation based on capital and surplus;

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

98 (ii) If the bank's files or the knowledge of its officers  
99 of the financial condition of each maker of such  
100 consumer paper is reasonably adequate, and an officer  
101 of the bank designated for that purpose by the board of  
102 directors of the bank certifies in writing that the bank  
103 is relying primarily upon the responsibility of each  
104 maker for payment of such loans or extensions of credit  
105 and not upon any full or partial recourse endorsement  
106 or guarantee by the transferor, the limitations of this  
107 section as to the loans or extensions of credit of each  
108 such maker shall be the sole applicable loan limitations;

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

120 (ii) Loans and extensions of credit which arise from  
121 the discount by dealers in livestock of paper given in  
122 payment for livestock, which paper carries a full  
123 recourse endorsement or unconditional guarantee of the  
124 seller and which are secured by the livestock being sold,  
125 shall be subject under this section, notwithstanding the  
126 collateral requirements set forth in subdivision (2) of

127 this subsection, to a limitation of twenty-five percent of  
128 such capital and surplus;

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

132 (K) Loans or extensions of credit to a corporation  
133 owning the property in which that state-chartered  
134 banking institution is located, when that state-chartered  
135 banking institution has an unimpaired capital and  
136 surplus of not less than one million dollars or when  
137 approved in writing by the commissioner of banking,  
138 shall not be subject to any limitation based on capital  
139 and surplus.

140 (5) (A) The commissioner of banking may prescribe  
141 rules and regulations to administer and carry out the  
142 purposes of this subsection including rules or regula-  
143 tions to define or further define terms used in this  
144 subsection and to establish limits or requirements other  
145 than those specified in this subsection for particular  
146 classes or categories of loans or extensions of credit;

147 (B) The commissioner of banking may also prescribe  
148 rules and regulations to deal with loans or extensions of  
149 credit, which were not in violation of this section prior  
150 to the effective date of this act, but which will be in  
151 violation of this section upon the effective date of this  
152 act; and

153 (C) The commissioner of banking also shall have  
154 authority to determine when a loan putatively made to  
155 a person shall for purposes of this subsection be  
156 attributed to another person.

157 (b) (1) Except as hereinafter provided or otherwise  
158 permitted by law, nothing herein contained shall  
159 authorize the purchase by a state-chartered banking  
160 institution for its own account of any shares of stock of  
161 any corporation: *Provided*, That a state-chartered  
162 banking institution may purchase and sell securities and  
163 stock without recourse, solely upon the order and for the  
164 account of customers.

165 (2) In no event shall the total amount of investment

166 securities of any one obligor or maker held by a state-  
167 chartered banking institution for its own account,  
168 exceed fifteen percent of the unimpaired capital and  
169 unimpaired surplus of that state-chartered banking  
170 institution.

171 (3) For purposes of this subsection:

172 (A) The term "investment securities" shall include  
173 marketable obligations, evidencing indebtedness of any  
174 person in the form of stocks, bonds, notes and/or  
175 debentures; "investment securities" may be further  
176 defined by regulation of the commissioner of banking;  
177 and

178 (B) The term "person" shall include any individual,  
179 partnership, society, association, firm, institution,  
180 company, public or private corporation, state, govern-  
181 mental agency, bureau, department, division or instru-  
182 mentality, political subdivision, county commission,  
183 municipality, trust, syndicate, estate or any other legal  
184 entity whatsoever, formed, created or existing under the  
185 laws of this state or any other jurisdiction.

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

188 (A) Obligations of the United States;

189 (B) General obligations of any state or of any political  
190 subdivision thereof;

191 (C) Obligations issued under authority of the Federal  
192 Farm Loan Act, as amended, or issued by the thirteen  
193 banks for cooperatives or any of them or the Federal  
194 Home Loan Banks;

195 (D) Obligations which are insured by the secretary of  
196 housing and urban development under Title XI of the  
197 National Housing Act (12 USC § 1749aaa et seq.);

198 (E) Obligations which are insured by the secretary of  
199 housing and urban development hereafter in this  
200 sentence referred to as the "secretary" pursuant to  
201 section 207 of the National Housing Act (12 USC §  
202 1713), if the debentures to be issued in payment of such  
203 insured obligations are guaranteed as to principal and

204 interest by the United States;

205 (F) Obligations, participations or other instruments of  
206 or issued by the federal national mortgage association  
207 or the government national mortgage association, or  
208 mortgages, obligations or other securities which are or  
209 ever have been sold by the federal home loan mortgage  
210 corporation pursuant to Section 305 or Section 306 of the  
211 Federal Home Loan Mortgage Corporation Act (12 USC  
212 § 1454 or § 1455);

213 (G) Obligations of the federal financing bank;

214 (H) Obligations or other instruments or securities of  
215 the student loan marketing association;

216 (I) Obligations of the environmental financing  
217 authority;

218 (J) Such obligations of any local public agency (as  
219 defined in Section 110(h) of the Housing Act of 1949 (42  
220 USC § 1460 (h)) as are secured by an agreement between  
221 the local public agency and the secretary of housing and  
222 urban development in which the local public agency  
223 agrees to borrow from said secretary and said secretary  
224 agrees to lend to said local public agency, moneys in an  
225 aggregate amount which (together with any other  
226 moneys irrevocably committed to the payment of  
227 interest on such obligations) will suffice to pay, when  
228 due, the interest on and all installments (including the  
229 final installment) of the principal of such obligations,  
230 which moneys under the terms of said agreement are  
231 required to be used for such payments;

232 (K) Obligations of a public housing agency as that  
233 term is defined in the United States Housing Act of  
234 1937, as amended, (42 USC Sec. 1401 et seq.) as are  
235 secured:

236 (i) By an agreement between the public housing  
237 agency and the secretary in which the public housing  
238 agency agrees to borrow from the secretary, and the  
239 secretary agrees to lend to the public housing agency,  
240 prior to the maturity of such obligations, moneys in an  
241 amount which, together with any other moneys irrevocably  
242 committed to the payment of interest on such

243 obligations, will suffice to pay the principal of such  
244 obligations with interest to maturity thereon, which  
245 moneys under the terms of said agreement are required  
246 to be used for the purpose of paying the principal of and  
247 the interest on such obligations at their maturity;

248 (ii) By a pledge of annual contributions under an  
249 annual contributions contract between such public  
250 housing agency and the secretary if such contract shall  
251 contain the covenant by the secretary which is autho-  
252 rized by subsection (b) of Section 22 (Section 6 (g) (42  
253 USC Sec. 1421a (b)) of the United States Housing Act  
254 of 1937, as amended, and if the maximum sum and the  
255 maximum period specified in such contract pursuant to  
256 said subsection (b), section twenty-two, shall not be less  
257 than the annual amount and the period for payment  
258 which are requisite to provide for the payment when due  
259 of all installments of principal and interest on such  
260 obligations; or

261 (iii) By a pledge of both annual contributions under  
262 an annual contributions contract containing the coven-  
263 ant by the secretary which is authorized by Section 6  
264 (g) of the United States Housing Act of 1937 (42 USC  
265 Sec. 1437d (g)) and a loan under an agreement between  
266 the local public housing agency and the secretary in  
267 which the public housing agency agrees to borrow from  
268 the secretary, and the secretary agrees to lend to the  
269 public housing agency, prior to the maturity of the  
270 obligations involved, moneys in an amount which,  
271 together with any other moneys irrevocably committed  
272 under the annual contributions contract to the payment  
273 of principal and interest on such obligations will suffice  
274 to provide for the payment when due of all installments  
275 of principal and interest on such obligations, which  
276 moneys under the terms of the agreement are required  
277 to be used for the purpose of paying the principal and  
278 interest on such obligations at their maturity; and

279 (L) Obligations of a corporation owning the property  
280 in which that state-chartered banking institution is  
281 located when that state-chartered banking institution  
282 has an unimpaired capital and surplus of not less than  
283 one million dollars or when approved in writing by the

284 commissioner of banking.

285 (5) Notwithstanding any other provision in this  
286 subsection, a state-chartered banking institution may  
287 purchase for its own account shares of stock issued by  
288 a corporation authorized to be created pursuant to Title  
289 IX of the Housing and Urban Development Act of 1968  
290 (42 USC Sec. 3931 et seq.) and may make investments  
291 in a partnership, limited partnership, or joint venture  
292 formed pursuant to section 907 (a) or 907 (c) of that act  
293 (42 USC Sec. 3937 (a) or (c)), and may purchase shares  
294 of stock issued by any West Virginia housing corpora-  
295 tion and may make investments in loans and commit-  
296 ments for loans to any such corporation: *Provided*, That  
297 in no event shall the total amount of such stock held for  
298 its own account and such investments in loans and  
299 commitments made by the state-chartered banking  
300 institution exceed at any time five percent of the  
301 unimpaired capital and unimpaired surplus of that  
302 state-chartered banking institution.

303 (6) Notwithstanding any other provision in this  
304 subsection, a state-chartered banking institution may  
305 purchase, for its own account, shares of stock of small  
306 business investment companies chartered under the  
307 laws of this state, which are licensed under the act of  
308 Congress known as the "Small Business Investment Act  
309 of 1958," as amended, and of business development  
310 corporations created and organized under the act of the  
311 Legislature known as the "West Virginia Business  
312 Development Corporation Act," as amended: *Provided*,  
313 That in no event shall any such state-chartered banking  
314 institution hold shares of stock in small business  
315 investment companies and/or business development  
316 corporations in any amount aggregating more than  
317 fifteen percent of the unimpaired capital and unim-  
318 paired surplus of that state-chartered banking  
319 institution.

320 (7) Notwithstanding any other provision of this  
321 subsection, a state-chartered banking institution may  
322 purchase for its own account shares of stock of a  
323 bankers' bank or a bank holding company which owns  
324 or controls such bankers' bank, but in no event shall the

325 total amount of such stock held by such state-chartered  
326 banking institution exceed at any time fifteen percent  
327 of the unimpaired capital and unimpaired surplus of  
328 that state-chartered banking institution and in no event  
329 shall the purchase of such stock result in that state-  
330 chartered banking institution acquiring more than  
331 twenty percent of any class of voting securities of such  
332 bankers' bank or of the bank holding company which  
333 owns or controls such bankers' bank.

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

344 (9) The commissioner of banking may prescribe rules  
345 and regulations to administer and carry out the  
346 purposes of this subsection, including rules and regula-  
347 tions to define or further define terms used in this  
348 subsection and to establish limits or requirements other  
349 than those specified in this subsection for particular  
350 classes or categories of investment securities.

351 (c) Loans to directors or executive officers are subject  
352 to the following limitations:

353 (1) A director or executive officer of any banking  
354 institution may not borrow, directly or indirectly, from  
355 a banking institution with which he is connected, any  
356 sum of money without the prior approval of a majority  
357 of the board of directors or discount committee of the  
358 banking institution, or of any duly constituted commit-  
359 tee whose duties include those usually performed by a  
360 discount committee. Such approval shall be by resolu-  
361 tion adopted by a majority vote of such board or  
362 committee, exclusive of the director or executive officer  
363 to whom the loan is made.

364 (2) If any director or executive officer of any bank

365 owns or controls a majority of the stock of any corpo-  
366 ration, or is a partner in any partnership, a loan to such  
367 corporation or partnership shall constitute a loan to such  
368 director or officer.

369 (3) For purposes of this subsection, an "executive  
370 officer" means:

371 (A) A person who participates or has authority to  
372 participate, other than in the capacity of a director, in  
373 major policymaking functions of the company or bank,  
374 regardless of any official title, salary or other compen-  
375 sation. The chairman of the board, the president, every  
376 vice president, the cashier, the secretary and the  
377 treasurer of a company or bank are considered executive  
378 officers unless the officer is excluded, by resolution of  
379 the board of directors or by the bylaws of the bank or  
380 company from participation, other than in the capacity  
381 of director, in major policymaking functions of the bank  
382 or company, and the officer does not actually participate  
383 therein.

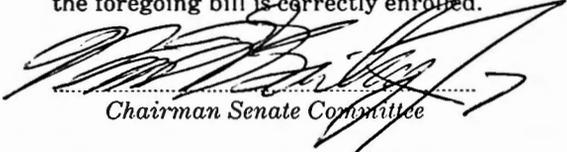
384 (B) An executive officer of a company of which the  
385 bank is a subsidiary, and any other subsidiary of that  
386 company, unless the executive officer of the subsidiary  
387 is excluded, by name or by title, from participation in  
388 major policymaking functions of the bank by resolutions  
389 of the boards of directors of both the subsidiary and the  
390 bank and does not actually participate in such major  
391 policymaking functions.

392 (d) The commissioner of banking and any employee of  
393 the department of banking may not borrow, directly or  
394 indirectly, any sum of money from a state chartered  
395 banking institution which is subject to examination by  
396 the commissioner or the department.

397 (e) Securities purchased by a banking institution shall  
398 be entered upon the books of the bank at actual cost. For  
399 the purpose of calculating the undivided profits appli-  
400 cable to the payment of dividends, securities shall not  
401 be valued at a valuation exceeding their present cost as  
402 determined by amortization, that is, by deducting from  
403 the cost of a security purchased at a premium, and  
404 charging to profit and loss a sum sufficient to bring it  
405 to par at maturity.

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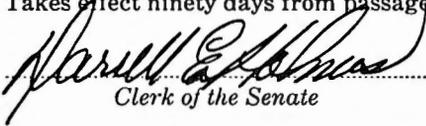
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker of the House of Delegates

The within *is approved* ..... this the *21<sup>st</sup>* .....  
day of *April* ....., 1993.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/16/93

Time 1:02 pm