

RECEIVED
1993 APR 22 AM 10:44
OFFICE OF WEST VIRGINIA
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)

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

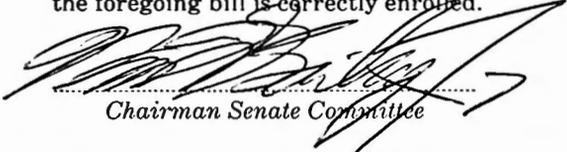
384 (B) An executive officer of a company of which the
385 bank is a subsidiary, and any other subsidiary of that
386 company, unless the executive officer of the subsidiary
387 is excluded, by name or by title, from participation in
388 major policymaking functions of the bank by resolutions
389 of 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.

Enr. Com. Sub. for H. B. 2249] 12

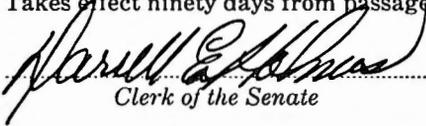
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
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 *21st*
day of *April*, 1993.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/16/93

Time 1:02 pm