WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

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ENROLLED

Com. Sub. on

HOUSE BILL No. 2249

(By Delegates Williams, Carper, Phillips, St. White, Rutledge and Harrison)

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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.

(a) (1) The total loans and extensions of credit by a state-chartered banking institution to a person outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed fifteen percent of the unimpaired capital and
unimpaired surplus of that state-chartered banking institution.

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

(3) For the purposes of this subsection:

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

(B) The term "person" shall include an individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction.

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

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

(B) The purchase of bankers' acceptances of the kind
described in section thirteen of the Federal Reserve Act
and issued by other banks shall not be subject to any
limitation based on capital and surplus;

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

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

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

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

(G) Loans or extensions of credit to any banking
institution or to any receiver, conservator or other agent
in charge of the business and property of such banking
institution or other federally insured depository institu-
tion, when such loans or extensions of credit are
approved by the commissioner of banking, shall not be
subject to any limitation based on capital and surplus;

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

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

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

(ii) Loans and extensions of credit which arise from
the discount by dealers in livestock of paper given in
payment for livestock, which paper carries a full
recourse endorsement or unconditional guarantee of the
seller and which are secured by the livestock being sold,
shall be subject under this section, notwithstanding the
collateral requirements set forth in subdivision (2) of
(J) Loans or extensions of credit to the student loan marketing association shall not be subject to any limitation based on capital and surplus; and

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

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

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

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

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

(2) In no event shall the total amount of investment
(3) For purposes of this subsection:

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

and

(B) The term "person" shall include any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction.

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

(A) Obligations of the United States;

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

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

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

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

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

(G) Obligations of the federal financing bank;

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

(I) Obligations of the environmental financing
authority;

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

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

(i) By an agreement between the public housing
agency and the secretary in which the public housing
agency agrees to borrow from the secretary, and the
secretary agrees to lend to the public housing agency,
prior to the maturity of such obligations, moneys in an
amount which, together with any other moneys irrevoc-
ably committed to the payment of interest on such
obligations, will suffice to pay the principal of such obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity;

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

(iii) By a pledge of both annual contributions under an annual contributions contract containing the covenant by the secretary which is authorized by Section 6 (g) of the United States Housing Act of 1937 (42 USC Sec. 1437d (g)) and a loan under an agreement between the local public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which, together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity; and

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

(5) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968 (42 USC Sec. 3931 et seq.) and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907 (a) or 907 (c) of that act (42 USC Sec. 3937 (a) or (c)), and may purchase shares of stock issued by any West Virginia housing corporation and may make investments in loans and commitments for loans to any such corporation: Provided, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the state-chartered banking institution exceed at any time five percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(6) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase, for its own account, shares of stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the “Small Business Investment Act of 1958,” as amended, and of business development corporations created and organized under the act of the Legislature known as the “West Virginia Business Development Corporation Act,” as amended: Provided, That in no event shall any such state-chartered banking institution hold shares of stock in small business investment companies and/or business development corporations in any amount aggregating more than fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

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

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

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

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

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

(2) If any director or executive officer of any bank
owns or controls a majority of the stock of any corpo-
ration, or is a partner in any partnership, a loan to such
corporation or partnership shall constitute a loan to such
director or officer.

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

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

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

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

(e) Securities purchased by a banking institution shall
be entered upon the books of the bank at actual cost. For
the purpose of calculating the undivided profits appli-
cable to the payment of dividends, securities shall not
be valued at a valuation exceeding their present cost as
determined by amortization, that is, by deducting from
the cost of a security purchased at a premium, and
charging to profit and loss a sum sufficient to bring it
to par at maturity.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 9th day of April, 1993.

Governor