WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

COUNCIL SUBSTITUTE FOR
SENATE BILL NO. 443

(By Senators MAUGHIN, HECKER)

PASSED March 11, 1995
In Effect 90 DAYS FROM PASSAGE
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 443

(SENATORS MANCHIN, BY REQUEST, AND HELMICK, original sponsors)

[Passed March 11, 1995; 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 limits to which banks can loan or extend credit to any one person or common enterprise.

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:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.
(a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension of credit is made.

(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. 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;

(B) The term "person" shall include an individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit 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;

(C) The term "unimpaired capital and unimpaired surplus" means the amount of total equity capital outstanding as indicated in the bank's most recent quarterly report of condition and income as filed with the commissioner of banking pursuant to section nineteen of this article, plus the amount of the allowance for loan losses, minus the amount of goodwill or other nonmarketable intangible assets included in such quarterly report pursuant to generally accepted accounting principles. Unrealized gains and losses on the bank's securities and loan portfolios shall be included in the calculation of total equity capital to the extent required by generally accepted accounting principles and applicable federal or state law, rule or regulation; and

(D) The term "common enterprise" includes, but is not limited to, persons and entities who are so related by business or otherwise that the expected source of repayment on the loan or extension of credit is substantially the same for each person or entity.

(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 having a term of ten months or less and 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 twenty percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided 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. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(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 ap-
proved 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 or
common enterprise transferring the paper shall be
subject under this section to a maximum limitation equal
to twenty-five percent of such unimpaired capital and
unimpaired surplus, notwithstanding the collateral
requirements set forth in subdivision (2) of this subsec-

(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 guaran-
tee 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, to a maximum
limitation equal to twenty-five percent of such unim-
paired capital and unimpaired surplus, notwithstanding
the collateral requirements set forth in subdivision (2) of
(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, to a limitation of twenty-five percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection.

(iii) If collateral values of the livestock documents, instruments or discount paper fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within thirty business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(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 to administer and carry out the purposes of this subsection including rules 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 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 securities of any one obligor or maker held by a state-chartered banking institution for its own account, exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.

(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, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit 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.

(C) The term “unimpaired capital and unimpaired surplus” shall have the same meaning as set forth in subsection (a) of this section.

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

(A) Obligations of the United States or its agencies;
(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 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 § 1437a) 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 irrevocably 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 Section 11 (42 USC § 1437i(a)(1)(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 section, 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 11 of the United States Housing Act of 1937 (42 USC § 1437i(a)(1)(B)) 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 unimpaired 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 corpora-
tion authorized to be created pursuant to Title IX of the
Housing and Urban Development Act of 1968 (42 USC §
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 § 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 subsec-
tion, 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 compa-
nies 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 subsec-
tion, 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 institu-
tion 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 to administer and carry out the purposes of this subsection, including rules 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) In the event of a material decline of unimpaired capital and unimpaired surplus of a state-chartered bank during any quarterly reporting period of more than twenty percent from that amount reported in the bank's most recent report of income and condition, or where there is a decrease of more than thirty percent in any twelve month period, the bank shall review its outstanding loans, extensions of credit and investments and report to the commissioner of banking those loans, extensions and investments that exceed the limitations of this section using the bank's current re-evaluated unimpaired capital and unimpaired surplus. The report shall detail the bank's position in each such loan, extension of credit, and investment. The commissioner may, within his or her discretion, require that such loans, extensions of credit and investments be brought into
conformity with the bank's current re-evaluated legal lending and investment limitation.

(d) Notwithstanding any other provision of this section, in order to ensure a bank's safety and soundness, the commissioner of banking retains the authority to direct any state-chartered bank to recalculate its lending and investment limits at more frequent intervals than otherwise provided herein and to require all outstanding loans, extensions of credit and investments be brought into conformance with the re-evaluated limitations. In such cases, the commissioner will provide the bank a written notice explaining briefly the specific reasons why the determination was made to require the more frequent calculations.

(e) 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 committee whose duties include those usually performed by a discount committee. Such approval shall be by resolution 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 corporation, 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 policy-making functions of the company or bank, regardless of any official title, salary or other compensation. 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 policy-making 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 policy-making 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 policy-making functions.

(f) 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.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: Provided, That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the
bank’s books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by such generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to section nineteen of this article in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Hooper
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell L. Barnes
Clerk of the Senate

Donald E. Kopp
Clerk of the House of Delegates

Earl Ray Tomlin
President of the Senate

Chuck Calhoun
Speaker House of Delegates

The within...........Approved........this the............., 1995.

day of............., 1995.
PRESENTED TO THE
GOVERNOR
Date 3/17/45
Time 3:35 pm