

SB-0443

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 443

(By Senators MAUCHIN & HELMICK)



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.

1 (a) (1) The total loans and extensions of credit made by
2 a state-chartered banking institution to any one person
3 or common enterprise and not fully secured, as deter-
4 mined in a manner consistent with subdivision (2) of this
5 subsection, shall not exceed fifteen percent of the
6 unimpaired capital and unimpaired surplus of that state-
7 chartered banking institution initially determined for
8 the period such loan or extension of credit is made.

9 (2) Where the total loans and extensions of credit by a
10 state-chartered banking institution to any one person or
11 common enterprise are fully secured by readily market-
12 able collateral having a market value, as determined by
13 reliable and continuously available price quotations, at
14 least equal to the outstanding amount of such loans and
15 extensions, then the bank may provide such loans or
16 extensions of up to ten percent of the unimpaired capital
17 and unimpaired surplus of that state-chartered banking
18 institution initially determined for the period such loan
19 or extension is made. This limitation shall be separate
20 from and in addition to the limitation contained in
21 subdivision (1) of this subsection.

22 (3) For the purposes of this subsection:

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

32 (B) The term "person" shall include an individual,
33 partnership, sole proprietorship, society, association,
34 firm, institution, company, public or private corporation,
35 not-for-profit corporation, state, governmental agency,
36 bureau, department, division or instrumentality, political
37 subdivision, county commission, municipality, trust,

38 syndicate, estate or any other legal entity whatsoever,
39 formed, created or existing under the laws of this state
40 or any other jurisdiction;

41 (C) The term "unimpaired capital and unimpaired
42 surplus" means the amount of total equity capital
43 outstanding as indicated in the bank's most recent
44 quarterly report of condition and income as filed with
45 the commissioner of banking pursuant to section nine-
46 teen of this article, plus the amount of the allowance for
47 loan losses, minus the amount of goodwill or other
48 nonmarketable intangible assets included in such
49 quarterly report pursuant to generally accepted account-
50 ing principles. Unrealized gains and losses on the bank's
51 securities and loan portfolios shall be included in the
52 calculation of total equity capital to the extent required
53 by generally accepted accounting principles and applica-
54 ble federal or state law, rule or regulation; and

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

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

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

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

71 (C) Loans and extensions of credit having a term of ten
72 months or less and secured by bills of lading, warehouse
73 receipts, or similar documents transferring or securing

74 title to readily marketable staples shall be subject to a
75 limitation of twenty percent of unimpaired capital and
76 unimpaired surplus in addition to the general limitations
77 set forth in subdivision (1) of this subsection, provided
78 the market value of the staples securing each additional
79 loan or extension of credit at all times equals or exceeds
80 one hundred fifteen percent of the outstanding amount
81 of such loan or extension of credit. The staples shall be
82 fully covered by insurance whenever it is customary to
83 insure such staples. If collateral values of the staples fall
84 below the levels required herein, to the extent that the
85 loan is no longer in conformance with its collateral
86 requirements and exceeds the general fifteen percent
87 limitation, the loan must be brought into conformance
88 within five business days, except where judicial proceed-
89 ings, regulatory actions or other extraordinary occur-
90 rences prevent the bank from taking action;

91 (D) Loans or extensions of credit secured by bonds,
92 notes, certificates of indebtedness or treasury bills of the
93 United States or by other such obligations fully guaran-
94 teed as to principal and interest by the United States or
95 by bonds, notes, certificates of indebtedness which are
96 general obligations of the state of West Virginia or by
97 other such obligations fully guaranteed as to principal
98 and interest by the state of West Virginia shall not be
99 subject to any limitation based on capital and surplus;

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

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

110 (G) Loans or extensions of credit to any banking

111 institution or to any receiver, conservator or other agent
112 in charge of the business and property of such banking
113 institution or other federally insured depository institu-
114 tion, when such loans or extensions of credit are ap-
115 proved by the commissioner of banking, shall not be
116 subject to any limitation based on capital and surplus;

117 (H) (i) Loans and extensions of credit arising from the
118 discount of negotiable or nonnegotiable installment
119 consumer paper which carries a full recourse endorse-
120 ment or unconditional guarantee by the person or
121 common enterprise transferring the paper shall be
122 subject under this section to a maximum limitation equal
123 to twenty-five percent of such unimpaired capital and
124 unimpaired surplus, notwithstanding the collateral
125 requirements set forth in subdivision (2) of this subsec-
126 tion.

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

138 (I) (i) Loans and extensions of credit secured by
139 shipping documents or instruments transferring or
140 securing title covering livestock or giving a lien on
141 livestock when the market value of the livestock securing
142 the obligation is not at any time less than one hundred
143 fifteen percent of the face amount of the note covered,
144 shall be subject under this section, to a maximum
145 limitation equal to twenty-five percent of such unim-
146 paired capital and unimpaired surplus, notwithstanding
147 the collateral requirements set forth in subdivision (2) of

148 this subsection.

149 (ii) Loans and extensions of credit which arise from the
150 discount by dealers in livestock of paper given in pay-
151 ment for livestock, which paper carries a full recourse
152 endorsement or unconditional guarantee of the seller and
153 which are secured by the livestock being sold, shall be
154 subject under this section, to a limitation of twenty-five
155 percent of such unimpaired capital and unimpaired
156 surplus, notwithstanding the collateral requirements set
157 forth in subdivision (2) of this subsection.

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

167 (J) Loans or extensions of credit to the student loan
168 marketing association shall not be subject to any limita-
169 tion based on capital and surplus; and

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

178 (5) (A) The commissioner of banking may prescribe
179 rules to administer and carry out the purposes of this
180 subsection including rules to define or further define
181 terms used in this subsection and to establish limits or
182 requirements other than those specified in this subsec-
183 tion for particular classes or categories of loans or

184 extensions of credit;

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

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

194 (b) (1) Except as hereinafter provided or otherwise
195 permitted by law, nothing herein contained shall autho-
196 rize the purchase by a state-chartered banking institu-
197 tion for its own account of any shares of stock of any
198 corporation: *Provided*, That a state-chartered banking
199 institution may purchase and sell securities and stock
200 without recourse, solely upon the order and for the
201 account of customers.

202 (2) In no event shall the total amount of investment
203 securities of any one obligor or maker held by a state-
204 chartered banking institution for its own account,
205 exceed fifteen percent of the unimpaired capital and
206 unimpaired surplus of that state-chartered banking
207 institution.

208 (3) For purposes of this subsection:

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

214 (B) The term "person" shall include any individual,
215 partnership, sole proprietorship, society, association,
216 firm, institution, company, public or private corporation,
217 not-for-profit corporation, state, governmental agency,
218 bureau, department, division or instrumentality, political

219 subdivision, county commission, municipality, trust,
220 syndicate, estate or any other legal entity whatsoever,
221 formed, created or existing under the laws of this state
222 or any other jurisdiction.

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

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

228 (A) Obligations of the United States or its agencies;

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

231 (C) Obligations issued under authority of the federal
232 Farm Loan Act, as amended, or issued by the thirteen
233 banks for cooperatives or any of them or the federal
234 home loan banks;

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

238 (E) Obligations which are insured by the secretary of
239 housing and urban development hereafter in this sen-
240 tence referred to as the "secretary" pursuant to Section
241 207 of the National Housing Act (12 USC § 1713), if the
242 debentures to be issued in payment of such insured
243 obligations are guaranteed as to principal and interest by
244 the United States;

245 (F) Obligations, participations or other instruments of
246 or issued by the federal national mortgage association or
247 the government national mortgage association, or
248 mortgages, obligations or other securities which are or
249 ever have been sold by the federal home loan mortgage
250 corporation pursuant to Section 305 or 306 of the federal
251 Home Loan Mortgage Corporation Act (12 USC § 1454 or
252 § 1455);

253 (G) Obligations of the federal financing bank;

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

256 (I) Obligations of the environmental financing author-
257 ity;

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

272 (K) Obligations of a public housing agency as that term
273 is defined in the United States Housing Act of 1937, as
274 amended, (42 USC § 1437a) as are secured:

275 (i) By an agreement between the public housing agency
276 and the secretary in which the public housing agency
277 agrees to borrow from the secretary, and the secretary
278 agrees to lend to the public housing agency, prior to the
279 maturity of such obligations, moneys in an amount
280 which, together with any other moneys irrevocably
281 committed to the payment of interest on such obliga-
282 tions, will suffice to pay the principal of such obligations
283 with interest to maturity thereon, which moneys under
284 the terms of said agreement are required to be used for
285 the purpose of paying the principal of and the interest on
286 such obligations at their maturity;

287 (ii) By a pledge of annual contributions under an
288 annual contributions contract between such public

289 housing agency and the secretary if such contract shall
290 contain the covenant by the secretary which is autho-
291 rized by Section 11 (42 USC § 1437i(a)(1)(B)) of the
292 United States Housing Act of 1937, as amended, and if
293 the maximum sum and the maximum period specified in
294 such contract pursuant to said section, shall not be less
295 than the annual amount and the period for payment
296 which are requisite to provide for the payment when due
297 of all installments of principal and interest on such
298 obligations; or

299 (iii) By a pledge of both annual contributions under an
300 annual contributions contract containing the covenant
301 by the secretary which is authorized by Section 11 of the
302 United States Housing Act of 1937 (42 USC §
303 1437i(a)(1)(B)) and a loan under an agreement between
304 the local public housing agency and the secretary in
305 which the public housing agency agrees to borrow from
306 the secretary, and the secretary agrees to lend to the
307 public housing agency, prior to the maturity of the
308 obligations involved, moneys in an amount which,
309 together with any other moneys irrevocably committed
310 under the annual contributions contract to the payment
311 of principal and interest on such obligations will suffice
312 to provide for the payment when due of all installments
313 of principal and interest on such obligations, which
314 moneys under the terms of the agreement are required to
315 be used for the purpose of paying the principal and
316 interest on such obligations at their maturity; and

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

323 (5) Notwithstanding any other provision in this subsec-
324 tion, a state-chartered banking institution may purchase
325 for its own account shares of stock issued by a corpora-

326 tion authorized to be created pursuant to Title IX of the
327 Housing and Urban Development Act of 1968 (42 USC §
328 3931 et seq.) and may make investments in a partnership,
329 limited partnership, or joint venture formed pursuant to
330 Section 907 (a) or 907 (c) of that act (42 USC § 3937 (a) or
331 (c)), and may purchase shares of stock issued by any
332 West Virginia housing corporation and may make
333 investments in loans and commitments for loans to any
334 such corporation: *Provided*, That in no event shall the
335 total amount of such stock held for its own account and
336 such investments in loans and commitments made by the
337 state-chartered banking institution exceed at any time
338 five percent of the unimpaired capital and unimpaired
339 surplus of that state-chartered banking institution.

340 (6) Notwithstanding any other provision in this subsec-
341 tion, a state-chartered banking institution may purchase,
342 for its own account, shares of stock of small business
343 investment companies chartered under the laws of this
344 state, which are licensed under the act of Congress
345 known as the "Small Business Investment Act of 1958",
346 as amended, and of business development corporations
347 created and organized under the act of the Legislature
348 known as the "West Virginia Business Development
349 Corporation Act", as amended: *Provided*, That in no
350 event shall any such state-chartered banking institution
351 hold shares of stock in small business investment compa-
352 nies and/or business development corporations in any
353 amount aggregating more than fifteen percent of the
354 unimpaired capital and unimpaired surplus of that state-
355 chartered banking institution.

356 (7) Notwithstanding any other provision of this subsec-
357 tion, a state-chartered banking institution may purchase
358 for its own account shares of stock of a bankers' bank or
359 a bank holding company which owns or controls such
360 bankers' bank, but in no event shall the total amount of
361 such stock held by such state-chartered banking institu-
362 tion exceed at any time fifteen percent of the unimpaired
363 capital and unimpaired surplus of that state-chartered

364 banking institution and in no event shall the purchase of
365 such stock result in that state-chartered banking institu-
366 tion acquiring more than twenty percent of any class of
367 voting securities of such bankers' bank or of the bank
368 holding company which owns or controls such bankers'
369 bank.

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

379 (9) The commissioner of banking may prescribe rules to
380 administer and carry out the purposes of this subsection,
381 including rules to define or further define terms used in
382 this subsection and to establish limits or requirements
383 other than those specified in this subsection for particu-
384 lar classes or categories of investment securities.

385 (c) In the event of a material decline of unimpaired
386 capital and unimpaired surplus of a state-chartered
387 bank during any quarterly reporting period of more than
388 twenty percent from that amount reported in the bank's
389 most recent report of income and condition, or where
390 there is a decrease of more than thirty percent in any
391 twelve month period, the bank shall review its outstand-
392 ing loans, extensions of credit and investments and
393 report to the commissioner of banking those loans,
394 extensions and investments that exceed the limitations
395 of this section using the bank's current re-evaluated
396 unimpaired capital and unimpaired surplus. The report
397 shall detail the bank's position in each such loan, exten-
398 sion of credit, and investment. The commissioner may,
399 within his or her discretion, require that such loans,
400 extensions of credit and investments be brought into

401 conformity with the bank's current re-evaluated legal
402 lending and investment limitation.

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

415 (e) Loans to directors or executive officers are subject
416 to the following limitations:

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

428 (2) If any director or executive officer of any bank
429 owns or controls a majority of the stock of any corpora-
430 tion, or is a partner in any partnership, a loan to such
431 corporation or partnership shall constitute a loan to such
432 director or officer.

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

435 (A) A person who participates or has authority to
436 participate, other than in the capacity of a director, in

437 major policy-making functions of the company or bank,
438 regardless of any official title, salary or other compensa-
439 tion. The chairman of the board, the president, every
440 vice president, the cashier, the secretary and the trea-
441 surer of a company or bank are considered executive
442 officers unless the officer is excluded, by resolution of
443 the board of directors or by the bylaws of the bank or
444 company from participation, other than in the capacity
445 of director, in major policy-making functions of the bank
446 or company, and the officer does not actually participate
447 therein.

448 (B) An executive officer of a company of which the
449 bank is a subsidiary, and any other subsidiary of that
450 company, unless the executive officer of the subsidiary
451 is excluded, by name or by title, from participation in
452 major policy-making functions of the bank by resolu-
453 tions of the boards of directors of both the subsidiary
454 and the bank and does not actually participate in such
455 major policy-making functions.

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

461 (g) Securities purchased by a state-chartered banking
462 institution shall be entered upon the books of the bank
463 at actual cost. For the purpose of calculating the undi-
464 vided profits applicable to the payment of dividends,
465 securities shall not be valued at a valuation exceeding
466 their present cost as determined by amortization of
467 premiums and accretion of discounts pursuant to gener-
468 ally accepted accounting principles, that is, by charging
469 to profit and loss a sum sufficient to bring them to par at
470 maturity: *Provided*, That securities held for trade or
471 permissible marketable equity securities and any other
472 types of debt securities which pursuant to generally
473 accepted accounting principles are to be carried on the

474 bank's books at fair market value shall have the unreal-
475 ized market appreciation and depreciation included in
476 the income and capital as permitted by such generally
477 accepted accounting principles.

478 (h) The market value of securities purchased and loans
479 extended by a state-chartered banking institution shall
480 be reported in all public reports and quarterly reports to
481 the commissioner pursuant to section nineteen of this
482 article in accordance with generally accepted accounting
483 principles and any applicable state or federal law, rule
484 or regulation.

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

Randy Schoonover
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Edkins
.....
Clerk of the Senate

Ronald Z. Hepp
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Carl Rubin
.....
Speaker House of Delegates

The within *is approved* this the *20th* day of *March*, 1995.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/17/95

Time 3:35 pm