WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 269

(By Senator Mirand, et al)

PASSED March 7, 2006

In Effect 90 days from Passage
BE IT ENACTED BY THE LEGISLATURE OF WEST VIRGINIA:

That §31A-4-26 of the Code of West Virginia, 1931, 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 institution, 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 endorsement 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 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 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 subsection;

(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 article, but which will be in violation of this section upon the effective date of this article; 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 that percentage of the unimpaired capital and unimpaired surplus of that state-chartered banking institution as is permitted for investment by national banks or for any federally insured depository institution.

(3) For purposes of this subsection:

(A) The term "investment securities" means a marketable obligation in the form of a stock, bond, note or debenture commonly regarded as an investment security and that is salable under ordinary circumstances with reasonable promptness at a fair value. "Derivative security" means a type of investment security involving a financial contract whose value depends on the values of one or more underlying assets or indexes of asset values.
The term "derivative" refers inter alia to financial contracts such as collateralized mortgage obligations ("CMOs"), forwards, futures, forward rate agreements, swaps, options and caps/floors/collars whose primary purpose is to transfer price risks associated with fluctuations in asset values;

(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; and

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

(4) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations or for any other federally insured depository institution. Such investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations or any other federally insured depository institution: Provided, That: (i) the purchase of investment securities under this subdivision shall be made only when in the bank's prudent judgment, which judgment may be based in part on estimates which it believes to be reliable, there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the securities may be sold with reasonable promptness at a price that corresponds to their fair value; and (ii) the purchase conforms to the requirement of subdivision (5) of this subsection. The Commissioner of Banking may, from
time to time, provide notice to state-chartered banking
institutions of authorized investments under this para-
graph.

(5) The purchase of investment securities, including
derivative securities, in which the investment characteris-
tics are considered distinctly or predominantly specula-
tive, or the purchase of such securities that are in default,
whether as to principal or interest, is prohibited. The
proper management of interest rate risk through the use of
derivative or other investment securities shall not be held
a speculative purpose.

(6) 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 reevaluated unimpaired capital
and unimpaired surplus. The report shall detail the bank's
position in each such loan, extension of credit and invest-
ment. The commissioner may, within his or her discretion,
require that such loans, extensions of credit and invest-
ments be brought into conformity with the bank's current
reevaluated legal lending and investment limitation.

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

296 (e) Loans to directors or executive officers are subject to
297 the following limitations:

298 (1) A director or executive officer of any banking
299 institution may not borrow, directly or indirectly, from a
300 banking institution with which he or she is connected any
301 sum of money without the prior approval of a majority of
302 the board of directors or discount committee of the
303 banking institution, or of any duly constituted committee
304 whose duties include those usually performed by a dis-
305 count committee. Such approval shall be by resolution
306 adopted by a majority vote of such board or committee,
307 exclusive of the director or executive officer to whom the
308 loan is made.

309 (2) If any director or executive officer of any bank owns
310 or controls a majority of the stock of any corporation, or
311 is a partner in any partnership, a loan to such corporation
312 or partnership shall constitute a loan to such director or
313 officer.

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

316 (A) A person who participates or has authority to
317 participate, other than in the capacity of a director, in
318 major policy-making functions of the company or bank,
319 regardless of any official title, salary or other compensa-
320 tion. 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 account-
ing principles are to be carried on the bank's books at fair
market value shall have the unrealized market apprecia-
tion 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 23rd Day of ______, 2006.

Governor