

SB 269

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 269

(By Senator Mi.ard, et al)

PASSED March 7, 2006

In Effect 90 days from Passage

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WEST VIRGINIA

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Senate Bill No. 269

(BY SENATORS MINARD, JENKINS, BARNES AND PLYMALE)

[Passed March 7, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to limitations on loans and extensions of credit; providing for a limitation on investments; limiting loans to executive officers and directors of banks and employees of the banking department; outlining exceptions; and creating a valuation of securities.

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.

1 (a) (1) The total loans and extensions of credit made by
2 a state-chartered banking institution to any one person or
3 common enterprise and not fully secured, as determined in
4 a manner consistent with subdivision (2) of this subsection,
5 shall not exceed fifteen percent of the unimpaired capital
6 and unimpaired surplus of that state-chartered banking
7 institution initially determined for the period such loan or
8 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 marketable
12 collateral having a market value, as determined by reliable
13 and continuously available price quotations, at least equal
14 to the outstanding amount of such loans and extensions,
15 then the bank may provide such loans or extensions of up
16 to ten percent of the unimpaired capital and unimpaired
17 surplus of that state-chartered banking institution initially
18 determined for the period such loan or extension is made.
19 This limitation shall be separate from and in addition to
20 the limitation contained in subdivision (1) of this subsec-
21 tion.

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 person
25 made on the basis of any obligation of that person to repay
26 the funds or repayable from specific property pledged by
27 or on behalf of the person and to the extent specified by
28 the Commissioner of Banking, such terms shall also
29 include any liability of a state-chartered banking institu-
30 tion to advance funds to or on behalf of a person pursuant
31 to a contractual commitment;

32 (B) The term "person" shall include an individual,
33 partnership, sole proprietorship, society, association, firm,
34 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 or
40 any other jurisdiction;

41 (C) The term “unimpaired capital and unimpaired
42 surplus” means the amount of total equity capital out-
43 standing as indicated in the bank’s most recent quarterly
44 report of condition and income as filed with the Commis-
45 sioner of Banking pursuant to section nineteen of this
46 article, plus the amount of the allowance for loan losses,
47 minus the amount of goodwill or other nonmarketable
48 intangible assets included in such quarterly report pursu-
49 ant to generally accepted accounting principles. Unreal-
50 ized gains and losses on the bank’s securities and loan
51 portfolios shall be included in the calculation of total
52 equity capital to the extent required by generally accepted
53 accounting principles and applicable federal or state law,
54 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 the
59 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 shall
65 not be subject to any limitation based on capital and
66 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 title
74 to readily marketable staples shall be subject to a limita-
75 tion of twenty percent of unimpaired capital and unim-
76 paired surplus in addition to the general limitations set
77 forth in subdivision (1) of this subsection, provided the
78 market value of the staples securing each additional loan
79 or extension of credit at all times equals or exceeds one
80 hundred fifteen percent of the outstanding amount of such
81 loan or extension of credit. The staples shall be fully
82 covered by insurance whenever it is customary to insure
83 such staples. If collateral values of the staples fall below
84 the levels required herein, to the extent that the loan is no
85 longer in conformance with its collateral requirements and
86 exceeds the general fifteen percent limitation, the loan
87 must be brought into conformance within five business
88 days, except where judicial proceedings, regulatory actions
89 or other extraordinary occurrences prevent the bank from
90 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 by
95 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 and
98 interest by the State of West Virginia shall not be subject
99 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 estab-
103 lishment 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 any
106 limitation based on capital and surplus;

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

110 (G) Loans or extensions of credit to any banking institu-
111 tion or to any receiver, conservator or other agent in
112 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 approved
115 by the Commissioner of Banking, shall not be subject to
116 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 endorsement
120 or unconditional guarantee by the person or common
121 enterprise transferring the paper shall be subject under
122 this section to a maximum limitation equal to twenty-five
123 percent of such unimpaired capital and unimpaired
124 surplus, notwithstanding the collateral requirements set
125 forth in subdivision (2) of this subsection;

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

137 (I) (i) Loans and extensions of credit secured by shipping
138 documents or instruments transferring or securing title
139 covering livestock or giving a lien on livestock when the
140 market value of the livestock securing the obligation is not
141 at any time less than one hundred fifteen percent of the
142 face amount of the note covered shall be subject under this

143 section to a maximum limitation equal to twenty-five
144 percent of such unimpaired capital and unimpaired
145 surplus, notwithstanding the collateral requirements set
146 forth in subdivision (2) of this subsection;

147 (ii) Loans and extensions of credit which arise from the
148 discount by dealers in livestock of paper given in payment
149 for livestock, which paper carries a full recourse endorse-
150 ment or unconditional guarantee of the seller and which
151 are secured by the livestock being sold, shall be subject
152 under this section to a limitation of twenty-five percent of
153 such unimpaired capital and unimpaired surplus, notwith-
154 standing the collateral requirements set forth in subdivi-
155 sion (2) of this subsection;

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

165 (J) Loans or extensions of credit to the Student Loan
166 Marketing Association shall not be subject to any limita-
167 tion based on capital and surplus; and

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

175 (5) (A) The Commissioner of Banking may prescribe rules
176 to administer and carry out the purposes of this subsection
177 including rules to define or further define terms used in

178 this subsection and to establish limits or requirements
179 other than those specified in this subsection for particular
180 classes or categories of loans or extensions of credit;

181 (B) The Commissioner of Banking may also prescribe
182 rules to deal with loans or extensions of credit, which were
183 not in violation of this section prior to the effective date of
184 this article, but which will be in violation of this section
185 upon the effective date of this article; and

186 (C) The Commissioner of Banking also shall have
187 authority to determine when a loan putatively made to a
188 person shall for purposes of this subsection be attributed
189 to another person.

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

197 (2) In no event shall the total amount of investment
198 securities of any one obligor or maker held by a state-
199 chartered banking institution for its own account exceed
200 that percentage of the unimpaired capital and unimpaired
201 surplus of that state-chartered banking institution as is
202 permitted for investment by national banks or for any
203 federally insured depository institution.

204 (3) For purposes of this subsection:

205 (A) The term "investment securities" means a market-
206 able obligation in the form of a stock, bond, note or
207 debenture commonly regarded as an investment security
208 and that is salable under ordinary circumstances with
209 reasonable promptness at a fair value. "Derivative
210 security" means a type of investment security involving a
211 financial contract whose value depends on the values of
212 one or more underlying assets or indexes of asset values.

213 The term “derivative” refers inter alia to financial con-
214 tracts such as collateralized mortgage obligations
215 (“CMOs”), forwards, futures, forward rate agreements,
216 swaps, options and caps/floors/collars whose primary
217 purpose is to transfer price risks associated with fluctua-
218 tions in asset values;

219 (B) The term “person” shall include any individual,
220 partnership, sole proprietorship, society, association, firm,
221 institution, company, public or private corporation,
222 not-for-profit corporation, state, governmental agency,
223 bureau, department, division or instrumentality, political
224 subdivision, county commission, municipality, trust,
225 syndicate, estate or any other legal entity whatsoever,
226 formed, created or existing under the laws of this state or
227 any other jurisdiction; and

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

231 (4) Notwithstanding any other provision of this subsec-
232 tion, a state-chartered banking institution may invest its
233 funds in any investment authorized for national banking
234 associations or for any other federally insured depository
235 institution. Such investments by state-chartered banking
236 institutions shall be on the same terms and conditions
237 applicable to national banking associations or any other
238 federally insured depository institution: *Provided*, That: (i)
239 The purchase of investment securities under this subdivi-
240 sion shall be made only when in the bank’s prudent
241 judgment, which judgment may be based in part on
242 estimates which it believes to be reliable, there is adequate
243 evidence that the obligor will be able to perform all it
244 undertakes to perform in connection with the securities,
245 including all debt service requirements, and that the
246 securities may be sold with reasonable promptness at a
247 price that corresponds to their fair value; and (ii) the
248 purchase conforms to the requirement of subdivision (5) of
249 this subsection. The Commissioner of Banking may, from

250 time to time, provide notice to state-chartered banking
251 institutions of authorized investments under this para-
252 graph.

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

261 (6) The Commissioner of Banking may prescribe rules to
262 administer and carry out the purposes of this subsection,
263 including rules to define or further define terms used in
264 this subsection and to establish limits or requirements
265 other than those specified in this subsection for particular
266 classes or categories of investment securities.

267 (c) In the event of a material decline of unimpaired
268 capital and unimpaired surplus of a state-chartered bank
269 during any quarterly reporting period of more than twenty
270 percent from that amount reported in the bank's most
271 recent report of income and condition, or where there is a
272 decrease of more than thirty percent in any twelve-month
273 period, the bank shall review its outstanding loans,
274 extensions of credit and investments and report to the
275 Commissioner of Banking those loans, extensions and
276 investments that exceed the limitations of this section
277 using the bank's current reevaluated unimpaired capital
278 and unimpaired surplus. The report shall detail the bank's
279 position in each such loan, extension of credit and invest-
280 ment. The commissioner may, within his or her discretion,
281 require that such loans, extensions of credit and invest-
282 ments be brought into conformity with the bank's current
283 reevaluated legal lending and investment limitation.

284 (d) Notwithstanding any other provision of this section,
285 in order to ensure a bank's safety and soundness, the

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 other-
289 wise 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

321 president, the cashier, the secretary and the treasurer of a
322 company or bank are considered executive officers unless
323 the officer is excluded, by resolution of the board of
324 directors or by the bylaws of the bank or company from
325 participation, other than in the capacity of director, in
326 major policy-making functions of the bank or company
327 and the officer does not actually participate therein.

328 (B) An executive officer of a company of which the bank
329 is a subsidiary, and any other subsidiary of that company,
330 unless the executive officer of the subsidiary is excluded,
331 by name or by title, from participation in major policy-
332 making functions of the bank by resolutions of the boards
333 of directors of both the subsidiary and the bank and does
334 not actually participate in such major policy-making
335 functions.

336 (f) The Commissioner of Banking and any employee of
337 the Department of Banking may not borrow, directly or
338 indirectly, any sum of money from a state-chartered
339 banking institution which is subject to examination by the
340 commissioner or the department.

341 (g) Securities purchased by a state-chartered banking
342 institution shall be entered upon the books of the bank at
343 actual cost. For the purpose of calculating the undivided
344 profits applicable to the payment of dividends, securities
345 shall not be valued at a valuation exceeding their present
346 cost as determined by amortization of premiums and
347 accretion of discounts pursuant to generally accepted
348 accounting principles, that is, by charging to profit and
349 loss a sum sufficient to bring them to par at maturity:
350 *Provided*, That securities held for trade or permissible
351 marketable equity securities and any other types of debt
352 securities which pursuant to generally accepted account-
353 ing principles are to be carried on the bank's books at fair
354 market value shall have the unrealized market apprecia-
355 tion and depreciation included in the income and capital
356 as permitted by such generally accepted accounting
357 principles.

358 (h) The market value of securities purchased and loans
359 extended by a state-chartered banking institution shall be
360 reported in all public reports and quarterly reports to the
361 commissioner pursuant to section nineteen of this article
362 in accordance with generally accepted accounting princi-
363 ples and any applicable state or federal law, rule or
364 regulation.

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

Chandy White
.....
Chairman Senate Committee

R. Burr
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Holmes
.....
Clerk of the Senate

Bugsy M. Sny
.....
Clerk of the House of Delegates

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

Robert L. Williams
.....
Speaker House of Delegates

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

Paul H. Patton
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2006

Time 11:00am