WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

House Bill No. 3155

(By Delegates Campbell, White and Kominar)

Passed April 11, 2009

In Effect Ninety Days from Passage
AN ACT to amend and reenact §12-1A-4 and §12-1A-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §12-1A-7 and §12-1A-8, all relating to the renewal of the West Virginia Small Business Linked Deposit Program; limiting liability of certain state agencies; penalties for violation; and updating certain language within the code.

Be it enacted by the Legislature of West Virginia:

That §12-1A-4 and §12-1A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §12-1A-7 and §12-1A-8, all to read as follows:

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-4. Applications for loan priority; loan package; counseling.
An eligible lending institution that desires to participate in the linked deposit program shall accept and review loan applications from eligible small businesses that have been prepared with the advice of the Small Business Development Center. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible small business and whether the loan application meets the criteria established in this article.

(b) An eligible small business shall certify on its loan application that: (1) The small business is in good standing with the State Tax Division, an authorized workers' compensation insurance carrier and WORKFORCE West Virginia as of the date of the application; (2) the linked deposit loan will be used to create new jobs or preserve existing jobs and employment opportunities; and (3) the linked deposit loan shall not be used to refinance an existing debt.

(c) In considering which eligible small businesses should receive linked deposit loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located, the number of jobs to be created and preserved by the receipt of the loan, the reasonable ability of the small business to repay the loan and other factors considered appropriate by the eligible financial institution.

(d) A small business receiving a linked deposit loan shall receive counseling provided by the small business development center when applying for the loan. The services available from the Small Business Development Center include eligibility certification, business planning, quarterly financial statement review and loan application assistance. The State Tax Division, WORKFORCE West Virginia and the authorized workers' compensation insurance carrier shall provide the Small Business Development Center with
information as to the standing of each small business loan applicant. The Small Business Development Center shall include these certifications with the loan application.

(e) After all approvals of the Small Business Development Center and the financial institution have been given for a linked deposit loan, the Small Business Development Center and the financial institution shall forward to the Treasurer a linked deposit loan request in the form and manner prescribed by the Treasurer. The Treasurer shall notify the Small Business Development Center when the linked deposit is made.

§12-1A-6. Certification and monitoring of compliance; accountability and reporting.

(a) Upon the placement of a linked deposit with an eligible lending institution, the institution shall lend the funds to the approved eligible small business listed in the linked deposit loan package. A certification of compliance with this section shall be sent to the Small Business Development Center by the eligible lending institution.

(b) As a condition of remaining in good standing with the lending institution and the state and as a condition of having the loan for up to seven years, the loan recipient shall receive counseling provided by the Small Business Development Center. Eligible small businesses shall also grant the lending institution the right to provide information on the status of the loan to the Small Business Development Center so as to assist the small business.

(c) The Small Business Development Center shall take any and all steps necessary to implement, advertise and monitor compliance with the linked deposit program.
(d) By January 31 of each year, the Small Business Development Center shall report on the linked deposit program for the preceding calendar year to the West Virginia Development Office, which shall then report to the Joint Committee on Government and Finance. The reports shall set forth the name of the small business, terms, delinquency and default rates, job growth, gross income evaluation and amounts of the loans upon which the linked deposits were based.

§12-1A-7. Liability of state.

The state, the Treasurer, the Department of Commerce, the West Virginia Development Office and the Small Business Development Center and their employees are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business. Any delay in payment or default on the part of an eligible small business does not in any manner affect the deposit agreement between the eligible lending institution and the Treasurer.

§12-1A-8. Penalties for violation of article.

(a) Any person who knowingly makes a false statement concerning an application or violates another provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 or confined in jail not less than one month nor more than one year.

(b) In addition to the criminal penalties provided in this section, no person who is convicted of a violation of subsection (a) of this section is eligible to participate in the linked deposit program.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the 6th day of May, 2009.

Governor