

SB 381

FILED
2010 MAR 18 PM 3:39
OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

—•—
ENROLLED

Senate Bill No. 381

(BY SENATORS MINARD, JENKINS,
McCABE, OLIVERIO AND PLYMALE)

[Passed March 9, 2010; in effect ninety days from passage.]

2010 MAR 18 PM 3:39

OFFICE OF THE SECRETARY OF STATE

ENROLLED

Senate Bill No. 381

(BY SENATORS MINARD, JENKINS, MCCABE, OLIVERIO AND PLYMALE)

[Passed March 9, 2010; 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 restrictions against the borrowing of money or the acceptance of credit by employees of the Division of Banking from institutions regulated by the division; clarifying and amending such restrictions; prohibiting the direct or indirect borrowing of any sum of money from a state chartered depository institution by an employee of the division who engages in certain review and regulatory activities with regard to state chartered depository institutions; prohibiting the direct or indirect borrowing of any sum of money from a state licensed nondepository institution by an employee of the division who engages in certain review and regulatory activities with regard to state licensed nondepository institutions; and prohibiting the commissioner, deputy commissioner and in-house counsel of the division from directly or indirectly borrowing any sum of money from any entity that is under the jurisdiction of the division.

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 subsec-
5 tion, may not exceed fifteen percent of the unimpaired
6 capital and unimpaired surplus of that state-chartered
7 banking institution initially determined for the period
8 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 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 ini-
18 tially determined for the period such loan or extension is
19 made. This limitation shall be separate from and in
20 addition to the limitation contained in subdivision (1) of
21 this subsection.

22 (3) For the purposes of this subsection:

23 (A) The term "loans and extensions of credit" includes
24 all direct or indirect advances of funds to a person made

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

32 (B) The term “person” includes an individual, partner-
33 ship, 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 the quarterly report pursuant
49 to generally accepted accounting principles. Unrealized
50 gains and losses on the bank’s securities and loan portfo-
51 lios shall be included in the calculation of total equity
52 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 are
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 are
65 not subject to any limitation based on capital and surplus;

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

70 (C) Loans and extensions of credit having a term of ten
71 months or less and secured by bills of lading, warehouse
72 receipts or similar documents transferring or securing title
73 to readily marketable staples are subject to a limitation of
74 twenty percent of unimpaired capital and unimpaired
75 surplus in addition to the general limitations set forth in
76 subdivision (1) of this subsection, provided the market
77 value of the staples securing each additional loan or
78 extension of credit at all times equals or exceeds one
79 hundred fifteen percent of the outstanding amount of such
80 loan or extension of credit. The staples shall be fully
81 covered by insurance whenever it is customary to insure
82 the staples. If collateral values of the staples fall below
83 the levels required herein, to the extent that the loan is no
84 longer in conformance with its collateral requirements and
85 exceeds the general fifteen percent limitation, the loan
86 must be brought into conformance within five business
87 days, except where judicial proceedings, regulatory
88 actions or other extraordinary occurrences prevent the
89 bank from taking action;

90 (D) Loans or extensions of credit secured by bonds,
91 notes, certificates of indebtedness or Treasury bills of the
92 United States or by other such obligations fully guaran-
93 teed as to principal and interest by the United States or by

94 bonds, notes, certificates of indebtedness which are
95 general obligations of the State of West Virginia or by
96 other such obligations fully guaranteed as to principal and
97 interest by the State of West Virginia are not subject to
98 any limitation based on capital and surplus;

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

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

109 (G) Loans or extensions of credit to any banking institu-
110 tion or to any receiver, conservator or other agent in
111 charge of the business and property of such banking
112 institution or other federally insured depository institu-
113 tion, when the loans or extensions of credit are approved
114 by the Commissioner of Banking, are not subject to any
115 limitation based on capital and surplus;

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

125 (ii) If the bank's files or the knowledge of its officers of
126 the financial condition of each maker of consumer paper
127 is reasonably adequate and an officer of the bank desig-

128 nated for that purpose by the board of directors of the
129 bank certifies in writing that the bank is relying primarily
130 upon the responsibility of each maker for payment of such
131 loans or extensions of credit and not upon any full or
132 partial recourse endorsement or guarantee by the trans-
133 feror, the limitations of this section as to the loans or
134 extensions of credit of each such maker are the sole
135 applicable loan limitations;

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

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

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

162 other extraordinary occurrences prevent the bank from
163 taking action;

164 (J) Loans or extensions of credit to the Student Loan
165 Marketing Association are not subject to any limitation
166 based on capital and surplus; and

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

174 (5)(A) The Commissioner of Banking may prescribe rules
175 to administer and carry out the purposes of this subsection
176 including rules to define or further define terms used in
177 this subsection and to establish limits or requirements
178 other than those specified in this subsection for particular
179 classes or categories of loans or extensions of credit;

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

185 (C) The Commissioner of Banking may also determine
186 when a loan putatively made to a person is, for purposes
187 of this subsection, attributed to another person.

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

195 (2) The total amount of investment securities of any one
196 obligor or maker held by a state-chartered banking
197 institution for its own account may not exceed that
198 percentage of the unimpaired capital and unimpaired
199 surplus of that state-chartered banking institution as is
200 permitted for investment by national banks or for any
201 federally insured depository institution.

202 (3) For purposes of this subsection:

203 (A) The term “investment securities” means a market-
204 able obligation in the form of a stock, bond, note or
205 debenture commonly regarded as an investment security
206 and that is salable under ordinary circumstances with
207 reasonable promptness at a fair value. “Derivative
208 security” means a type of investment security involving a
209 financial contract whose value depends on the values of
210 one or more underlying assets or indexes of asset values.
211 The term “derivative” refers inter alia to financial con-
212 tracts such as collateralized mortgage obligations
213 (“CMOs”), forwards, futures, forward rate agreements,
214 swaps, options and caps/floors/collars whose primary
215 purpose is to transfer price risks associated with fluctua-
216 tions in asset values;

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

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

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

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

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

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

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

294 (e) Loans to directors or executive officers are subject to
295 the following limitations:

296 (1) A director or executive officer of any banking
297 institution may not borrow, directly or indirectly, from a
298 banking institution with which he or she is connected any
299 sum of money without the prior approval of a majority of

300 the board of directors or discount committee of the
301 banking institution, or of any duly constituted committee
302 whose duties include those usually performed by a dis-
303 count committee. The approval shall be by resolution
304 adopted by a majority vote of the board or committee,
305 exclusive of the director or executive officer to whom the
306 loan is made.

307 (2) If any director or executive officer of any bank owns
308 or controls a majority of the stock of any corporation, or
309 is a partner in any partnership, a loan to the corporation
310 or partnership constitutes a loan to the director or officer.

311 (3) For purposes of this subsection, an “executive
312 officer” means:

313 (A) A person who participates or has authority to
314 participate, other than in the capacity of a director, in
315 major policy-making functions of the company or bank,
316 regardless of any official title, salary or other compensa-
317 tion. The chairman of the board, the president, every vice
318 president, the cashier, the secretary and the treasurer of a
319 company or bank are considered executive officers unless
320 the officer is excluded, by resolution of the board of
321 directors or by the bylaws of the bank or company from
322 participation, other than in the capacity of director, in
323 major policy-making functions of the bank or company
324 and the officer does not actually participate therein.

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

333 (f) An employee of the Division of Banking whose
334 regulatory activities involve participation in an examina-
335 tion, audit, visitation, review, investigation or any other
336 particular matter involving depository institutions char-
337 tered by the division may not borrow, directly or indi-
338 rectly, any sum of money from a state-chartered bank or
339 state-chartered credit union. An employee of the Division
340 of Banking whose regulatory activities involve participa-
341 tion in an examination, audit, visitation, review, investiga-
342 tion or any other particular matter involving
343 nondepository institutions licensed by the division may
344 not borrow, directly or indirectly, any sum of money from
345 a nondepository entity that is licensed by the division. The
346 commissioner, deputy commissioner and in-house legal
347 counsel of the Division of Banking may not borrow,
348 directly or indirectly, any sum of money from any entity
349 that is under the jurisdiction of the division.

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

366 (h) The market value of securities purchased and loans
367 extended by a state-chartered banking institution shall be

368 reported in all public reports and quarterly reports to the
369 commissioner pursuant to section nineteen of this article
370 in accordance with generally accepted accounting princi-
371 ples and any applicable state or federal law, rule or
372 regulation.



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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *18th*
Day of *March* 2010.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2010

Time

9:13am