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WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

REGULAR SESSION, 2015



ENROLLED

Senate Bill No. 545

(BY SENATORS NOHE, WALTERS,
PALUMBO AND GAUNCH)

[PASSED MARCH 10, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB545

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(BY SENATORS NOHE, WALTERS,
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[Passed March 10, 2015; 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 removing requirement of prior approval of overdrafts made by a director or executive officer of a banking institution under certain conditions.

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 a
- 4 manner consistent with subdivision (2) of this subsection.

5 may not exceed fifteen percent of the unimpaired capital and
6 unimpaired surplus of that state-chartered banking institution
7 initially determined for the period such loan or extension of
8 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 to
14 the outstanding amount of such loans and extensions, then the
15 bank may provide such loans or extensions of up to ten
16 percent of the unimpaired capital and unimpaired surplus of
17 that state-chartered banking institution initially determined
18 for the period such loan or extension is made. This limitation
19 shall be separate from and in addition to the limitation
20 contained in subdivision (1) of this subsection.

21 (3) For the purposes of this subsection:

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

30 (B) The term "person" includes an individual,
31 partnership, sole proprietorship, society, association, firm,
32 institution, company, public or private corporation,
33 not-for-profit corporation, state, governmental agency,
34 bureau, department, division or instrumentality, political
35 subdivision, county commission, municipality, trust,
36 syndicate, estate or any other legal entity whatsoever, formed,

37 created or existing under the laws of this state or any other
38 jurisdiction;

39 (C) The term “unimpaired capital and unimpaired
40 surplus” means the amount of total equity capital outstanding
41 as indicated in the bank’s most recent quarterly report of
42 condition and income as filed with the Commissioner of
43 Banking pursuant to section nineteen of this article, plus the
44 amount of the allowance for loan losses, minus the amount of
45 goodwill or other nonmarketable intangible assets included
46 in the quarterly report pursuant to generally accepted
47 accounting principles. Unrealized gains and losses on the
48 bank’s securities and loan portfolios shall be included in the
49 calculation of total equity capital to the extent required by
50 generally accepted accounting principles and applicable
51 federal or state law, rule or regulation; and

52 (D) The term “common enterprise” includes, but is not
53 limited to, persons and entities who are so related by business
54 or otherwise that the expected source of repayment on the
55 loan or extension of credit is substantially the same for each
56 person or entity.

57 (4) The limitations contained in this subsection are
58 subject to the following exceptions:

59 (A) Loans or extensions of credit arising from the
60 discount of commercial or business paper evidencing an
61 obligation to the person negotiating it with recourse are not
62 subject to any limitation based on capital and surplus;

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

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

86 (D) Loans or extensions of credit secured by bonds,
87 notes, certificates of indebtedness or Treasury bills of the
88 United States or by other such obligations fully guaranteed as
89 to principal and interest by the United States or by bonds,
90 notes, certificates of indebtedness which are general
91 obligations of the State of West Virginia or by other such
92 obligations fully guaranteed as to principal and interest by the
93 State of West Virginia are not subject to any limitation based
94 on capital and surplus;

95 (E) Loans or extensions of credit to or secured by
96 unconditional takeout commitments or guarantees of any
97 department, agency, bureau, board, commission or
98 establishment of the United States or of the State of West
99 Virginia or any corporation wholly owned directly or
100 indirectly by the United States are not subject to any
101 limitation based on capital and surplus;

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

105 **(G) Loans or extensions of credit to any banking**
106 **institution or to any receiver, conservator or other agent in**
107 **charge of the business and property of such banking**
108 **institution or other federally insured depository institution,**
109 **when the loans or extensions of credit are approved by the**
110 **Commissioner of Banking, are not subject to any limitation**
111 **based on capital and surplus;**

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

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

131 **(I) (i) Loans and extensions of credit secured by shipping**
132 **documents or instruments transferring or securing title**
133 **covering livestock or giving a lien on livestock when the**

134 market value of the livestock securing the obligation is not at
135 any time less than one hundred fifteen percent of the face
136 amount of the note covered shall be subject under this section
137 to a maximum limitation equal to twenty-five percent of the
138 unimpaired capital and unimpaired surplus, notwithstanding
139 the collateral requirements set forth in subdivision (2) of this
140 subsection;

141 (ii) Loans and extensions of credit which arise from the
142 discount by dealers in livestock of paper given in payment for
143 livestock, which paper carries a full recourse endorsement or
144 unconditional guarantee of the seller and which are secured
145 by the livestock being sold, are subject under this section to
146 a limitation of twenty-five percent of the unimpaired capital
147 and unimpaired surplus, notwithstanding the collateral
148 requirements set forth in subdivision (2) of this subsection;

149 (iii) If collateral values of the livestock documents,
150 instruments or discount paper fall below the levels required
151 herein, to the extent that the loan is no longer in conformance
152 with its collateral requirements and exceeds the general
153 fifteen percent limitation, the loan must be brought into
154 conformance within thirty business days, except where
155 judicial proceedings, regulatory actions or other
156 extraordinary occurrences prevent the bank from taking
157 action;

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

161 (K) Loans or extensions of credit to a corporation owning
162 the property in which that state-chartered banking institution
163 is located, when that state-chartered banking institution has
164 an unimpaired capital and surplus of not less than \$1 million
165 or when approved in writing by the Commissioner of

166 Banking, are not subject to any limitation based on capital
167 and surplus.

168 (5) (A) The Commissioner of Banking may prescribe
169 rules to administer and carry out the purposes of this
170 subsection including rules to define or further define terms
171 used in this subsection and to establish limits or requirements
172 other than those specified in this subsection for particular
173 classes or categories of loans or extensions of credit;

174 (B) The Commissioner of Banking may also prescribe
175 rules to deal with loans or extensions of credit, which were
176 not in violation of this section prior to the effective date of
177 this article, but which will be in violation of this section upon
178 the effective date of this article; and

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

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

189 (2) The total amount of investment securities of any one
190 obligor or maker held by a state-chartered banking institution
191 for its own account may not exceed that percentage of the
192 unimpaired capital and unimpaired surplus of that
193 state-chartered banking institution as is permitted for
194 investment by national banks or for any federally insured
195 depository institution.

196 (3) For purposes of this subsection:

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

210 (B) The term "person" includes any individual,
211 partnership, sole proprietorship, society, association, firm,
212 institution, company, public or private corporation,
213 not-for-profit corporation, state, governmental agency,
214 bureau, department, division or instrumentality, political
215 subdivision, county commission, municipality, trust,
216 syndicate, estate or any other legal entity whatsoever, formed,
217 created or existing under the laws of this state or any other
218 jurisdiction; and

219 (C) The term "unimpaired capital and unimpaired
220 surplus" has the same meaning as set forth in subsection (a)
221 of this section.

222 (4) Notwithstanding any other provision of this
223 subsection, a state-chartered banking institution may invest
224 its funds in any investment authorized for national banking
225 associations or for any other federally insured depository
226 institution. The investments by state-chartered banking
227 institutions shall be on the same terms and conditions

228 applicable to national banking associations or any other
229 federally insured depository institution: *Provided*, That: (i)
230 The purchase of investment securities under this subdivision
231 may be made only when in the bank's prudent judgment,
232 which judgment may be based in part on estimates which it
233 believes to be reliable, there is adequate evidence that the
234 obligor will be able to perform all it undertakes to perform in
235 connection with the securities, including all debt service
236 requirements, and that the securities may be sold with
237 reasonable promptness at a price that corresponds to their fair
238 value; and (ii) the purchase conforms to the requirement of
239 subdivision (5) of this subsection. The Commissioner of
240 Banking may, from time to time, provide notice to
241 state-chartered banking institutions of authorized investments
242 under this paragraph.

243 (5) The purchase of investment securities, including
244 derivative securities, in which the investment characteristics
245 are considered distinctly or predominantly speculative, or the
246 purchase of such securities that are in default, whether as to
247 principal or interest, is prohibited. The proper management of
248 interest rate risk through the use of derivative or other
249 investment securities may not be held a speculative purpose.

250 (6) The Commissioner of Banking may prescribe rules to
251 administer and carry out the purposes of this subsection,
252 including rules to define or further define terms used in this
253 subsection and to establish limits or requirements other than
254 those specified in this subsection for particular classes or
255 categories of investment securities.

256 (c) If there is a material decline of unimpaired capital
257 and unimpaired surplus of a state-chartered bank during any
258 quarterly reporting period of more than twenty percent from
259 that amount reported in the bank's most recent report of
260 income and condition, or where there is a decrease of more

261 than thirty percent in any twelve-month period, the bank
262 shall review its outstanding loans, extensions of credit and
263 investments and report to the Commissioner of Banking
264 those loans, extensions and investments that exceed the
265 limitations of this section using the bank's current
266 reevaluated unimpaired capital and unimpaired surplus. The
267 report shall detail the bank's position in each such loan,
268 extension of credit and investment. The commissioner may,
269 within his or her discretion, require that such loans,
270 extensions of credit and investments be brought into
271 conformity with the bank's current reevaluated legal
272 lending and investment limitation.

273 (d) Notwithstanding any other provision of this section,
274 in order to ensure a bank's safety and soundness, the
275 Commissioner of Banking retains the authority to direct any
276 state-chartered bank to recalculate its lending and investment
277 limits at more frequent intervals than otherwise provided
278 herein and to require all outstanding loans, extensions of
279 credit and investments be brought into conformance with the
280 reevaluated limitations. In such cases, the commissioner will
281 provide the bank a written notice explaining briefly the
282 specific reasons why the determination was made to require
283 the more frequent calculations.

284 (e) Loans to directors or executive officers are subject to
285 the following limitations:

286 (1) A director or executive officer of any banking
287 institution may not borrow, directly or indirectly, from a
288 banking institution with which he or she is connected any
289 sum of money without the prior approval of a majority of the
290 board of directors or discount committee of the banking
291 institution, or of any duly constituted committee whose duties
292 include those usually performed by a discount committee.
293 The approval shall be by resolution adopted by a majority

294 vote of the board or committee, exclusive of the director or
295 executive officer to whom the loan is made.

296 (2) If any director or executive officer of any bank owns
297 or controls a majority of the stock of any corporation, or is a
298 partner in any partnership, a loan to the corporation or
299 partnership constitutes a loan to the director or officer.

300 (3) For purposes of this subsection, an "executive officer"
301 means:

302 (A) A person who participates or has authority to
303 participate, other than in the capacity of a director, in major
304 policy-making functions of the company or bank, regardless of
305 any official title, salary or other compensation. The chairman of
306 the board, the president, every vice president, the cashier, the
307 secretary and the treasurer of a company or bank are considered
308 executive officers unless the officer is excluded, by resolution
309 of the board of directors or by the bylaws of the bank or
310 company from participation, other than in the capacity of
311 director, in major policy-making functions of the bank or
312 company and the officer does not actually participate therein.

313 (B) An executive officer of a company of which the bank
314 is a subsidiary, and any other subsidiary of that company,
315 unless the executive officer of the subsidiary is excluded, by
316 name or by title, from participation in major policy-making
317 functions of the bank by resolutions of the boards of directors
318 of both the subsidiary and the bank and does not actually
319 participate in such major policy-making functions.

320 (4) Prior approval under subdivision (1) of this subsection
321 is not required for:

322 (A) Payments of overdrafts pursuant to: (i) A written,
323 preauthorized, interest-bearing extension of credit plan that

324 has been approved by the board of directors or an appropriate
325 committee and that specifies a method of repayment; or (ii)
326 a written, preauthorized transfer of funds from another
327 account of the account holder at the bank; or

328 (B) Payments of inadvertent overdrafts on an account in
329 an aggregate amount of \$1,000 or less: *Provided*, That: (i)
330 The account is not overdrawn for more than five consecutive
331 business days; and (ii) the bank charges the director or
332 executive officer the same fee charged to any other customer
333 of the bank in similar circumstances.

334 (f) An employee of the Division of Banking whose
335 regulatory activities involve participation in an examination,
336 audit, visitation, review, investigation or any other particular
337 matter involving depository institutions chartered by the
338 division may not borrow, directly or indirectly, any sum of
339 money from a state-chartered bank or state-chartered credit
340 union. An employee of the Division of Banking whose
341 regulatory activities involve participation in an examination,
342 audit, visitation, review, investigation or any other particular
343 matter involving nondepository institutions licensed by the
344 division may not borrow, directly or indirectly, any sum of
345 money from a nondepository entity that is licensed by the
346 division. The commissioner, deputy commissioner and
347 in-house legal counsel of the Division of Banking may not
348 borrow, directly or indirectly, any sum of money from any
349 entity 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 may
354 not be valued at a valuation exceeding their present cost as
355 determined by amortization of premiums and accretion of
356 discounts pursuant to generally accepted accounting

357 principles, that is, by charging to profit and loss a sum
358 sufficient to bring them to par at maturity: *Provided*, That
359 securities held for trade or permissible marketable equity
360 securities and any other types of debt securities which
361 pursuant to generally accepted accounting principles are to be
362 carried on the bank's books at fair market value shall have
363 the unrealized market appreciation and depreciation included
364 in the income and capital as permitted by generally accepted
365 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 in
370 accordance with generally accepted accounting principles and
371 any applicable state or federal law, rule or regulation.

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

Maud R. Raymond
.....
Chairman Senate Committee

John B. McCall
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clark S. Banner
.....
Clerk of the Senate

Stephen J. Harris
.....
Clerk of the House of Delegates

William D. Hale
.....
President of the Senate

Philip H. Parrott
.....
Speaker of the House of Delegates

The within *is approved* this the *24th*
Day of *March*, 2015.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2015

Time 10:46 AM