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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2001*

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**ENROLLED**

SENATE BILL NO. 717

(By Senator Craig, et al)

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PASSED April 13, 2001

In Effect July 1, 2001 ~~Passage~~

FILED

2001 MAY -2 A 11: 17

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**Senate Bill No. 717**

(BY SENATORS CRAIGO, UNGER, OLIVERIO, ANDERSON, DEEM,  
KESSLER, MCCABE, REDD, ROSS AND SHARPE)

[Passed April 13, 2001; to take effect July 1, 2001.]

AN ACT to amend and reenact article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nine, all relating to the West Virginia small business linked deposit program.

*Be it enacted by the Legislature of West Virginia:*

That article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended, by adding thereto a new section, designated section nine, all to read as follows:

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

**§12-1A-1. Definitions.**

1 (a) "Treasurer" means the West Virginia treasurer's  
2 office.

3 (b) "Eligible small business" means any business that:  
4 (1) Employs fifty or fewer employees and has gross annual  
5 receipts of five million dollars or less; (2) is headquartered  
6 in this state; and (3) is organized for profit.

7 (c) "Eligible lending institution" means a financial  
8 institution that is eligible to make commercial loans, is a  
9 public depository of state funds and agrees to participate  
10 in the linked deposit program.

11 (d) "Linked deposit" means a certificate of deposit  
12 placed by the treasurer with an eligible lending institution  
13 at three percent below current market rates, as determined  
14 and calculated by the treasurer, provided the institution  
15 agrees to lend the value of the deposit, according to the  
16 deposit agreement provided for by this article, to eligible  
17 small businesses at three percent below the present  
18 borrowing rate applicable to each specific business at the  
19 time of the deposit of state funds in the institution.

**§12-1A-2. Legislative findings.**

1 The Legislature finds that many small businesses  
2 throughout the state are experiencing economic stagnation  
3 or decline, that high interest rates have caused small  
4 businesses in this state to suffer disproportionately in  
5 profitability and competition and that the high interest  
6 rates have fostered a serious increase in unemployment.  
7 The linked deposit program provided for by this article is  
8 intended to provide a statewide availability of lower cost  
9 funds for lending purposes that will materially contribute  
10 to the economic revitalization of this state. Accordingly,  
11 it is declared to be the public policy of the state through  
12 the small business linked deposit program to create an  
13 availability of lower-cost funds to inject needed capital  
14 into the small business community, sustain or improve  
15 business profitability, and protect the jobs of citizens of

16 this state. The Legislature further finds that the involve-  
17 ment of both the treasurer in facilitating the deposit of  
18 funds for the program and the small business development  
19 center in determining which businesses will receive the  
20 benefits of the linked deposit program is necessary in  
21 order for state funds to be used in the most effective  
22 manner possible in assisting small businesses throughout  
23 the state and thereby maximizing the impact of the  
24 program.

**§12-1A-3. Limitations on investment in linked deposits.**

1 (a) The treasurer shall invest in linked deposits. The  
2 total amount so deposited at any one time shall not exceed,  
3 in the aggregate, twenty million dollars.

4 (b) Small business linked deposit funds shall be used to  
5 provide each applicant with no more than one hundred  
6 fifty thousand dollars for each reduced rate loan.

7 (c) When deciding how much to invest in linked deposits,  
8 the treasurer shall give priority to the investment, liquidity  
9 and cash flow needs of the state.

**§12-1A-4. Applications for loan priority; loan package; counsel-  
ing.**

1 (a) An eligible lending institution that desires to receive  
2 a linked deposit shall accept and review applications for  
3 loans from eligible small businesses. The lending institu-  
4 tion shall apply all usual lending standards to determine  
5 the credit worthiness of each eligible small business and  
6 whether the loan application meets the criteria established  
7 in this article.

8 (b) An eligible small business shall certify on its loan  
9 application that the reduced rate loan will be used exclu-  
10 sively to create new jobs or preserve existing jobs and  
11 employment opportunities. A reduced rate loan shall not  
12 be used to refinance an existing debt. Whoever knowingly  
13 makes a false statement concerning an application shall be

14 prohibited from entering into the linked deposit loan  
15 program and shall be subject to the criminal penalties of  
16 section eight of this article.

17 (c) In considering which eligible small businesses should  
18 receive reduced rate loans, the eligible lending institution  
19 shall give priority to the economic needs of the area in  
20 which the business is located, the number of jobs to be  
21 created and preserved by the receipt of the loan, the  
22 reasonable ability of the small business to repay the loan  
23 and other factors considered appropriate by the eligible  
24 financial institution.

25 (d) A small business receiving a linked deposit loan shall  
26 receive supervision and counseling provided by the small  
27 business development center as a condition of remaining  
28 in good standing with the lending institution and the state  
29 and as a condition of having the loan renewed for up to  
30 four years. The services available from the small business  
31 development center include eligibility certification,  
32 business planning, quarterly financial statement review  
33 and loan proposal assistance. Eligible small businesses  
34 shall also grant the lending institution the right to provide  
35 information on the status of the loan to the small business  
36 development center so as to assist the small business.

37 (e) The eligible financial institution shall forward to the  
38 treasurer a linked deposit loan package, in the form and  
39 manner as prescribed by the small business development  
40 center and the treasurer. The package shall include the  
41 amount of the loan requested and the number of jobs to be  
42 created or sustained by each eligible small business. The  
43 institution shall certify that each applicant is an eligible  
44 small business, and may, for each business, certify the  
45 present borrowing rate applicable to each specific eligible  
46 business.

47 (f) The rate charged to the eligible small business shall  
48 not exceed the prime interest rate as published by the wall

49 street journal on the date that the eligible financial  
50 institution certifies the applicant is eligible.

**§12-1A-5. Acceptance or rejection of loan package; deposit agreement.**

1 (a) The small business development center in coopera-  
2 tion with the treasurer may accept or reject a linked  
3 deposit loan package or any portion thereof based on the  
4 criteria prescribed by this article.

5 (b) The treasurer shall reject any linked deposit loan  
6 package if the small business requesting the loan is not in  
7 good standing with the state tax department and the  
8 bureau of employment programs and these agencies shall  
9 provide the treasurer with such information as to the  
10 standing of each small business loan applicant, notwith-  
11 standing any provision of this code to the contrary.

12 (c) Upon acceptance of the linked deposit loan package  
13 or any portion thereof by the the small business develop-  
14 ment center in cooperation with the treasurer, the trea-  
15 surer may place certificates of deposit with the eligible  
16 lending institution at three percent below current market  
17 rates, as determined and calculated by the treasurer.  
18 When necessary, the treasurer may place certificates of  
19 deposit prior to acceptance of a linked deposit loan  
20 package.

21 (d) The eligible lending institution shall enter into a  
22 deposit agreement with the treasurer in a form in compli-  
23 ance with the requirements of this article. The deposit  
24 agreement shall reflect the market conditions prevailing in  
25 the lending area and the period of time in which the  
26 lending institution is to lend funds upon the placement of  
27 a linked deposit. The deposit agreement shall include  
28 provisions for the certificates of deposit to be placed for a  
29 maximum of four years with annual renewals. Interest  
30 shall be paid at the times determined by the treasurer.

**§12-1A-6. Rate of loan; certification and monitoring of compliance; accountability and reporting.**

1 (a) Upon the placement of a linked deposit with an  
2 eligible lending institution, the institution is required to  
3 lend the funds to each approved eligible small business  
4 listed in the linked deposit loan package required in  
5 subsection (d), section four of this article and in accordance with the deposit agreement required by subsection  
6 (c), section five of this article. The loan shall be at three  
7 percent below the present borrowing rate applicable to  
8 each business. A certification of compliance with this  
9 section in the form and manner as prescribed by the small  
10 business development center and the treasurer shall be  
11 required of the eligible lending institution.  
12

13 (b) The small business development center and the  
14 treasurer shall take any and all steps necessary to implement the linked deposit program and monitor compliance  
15 of eligible lending institutions. The small business development center shall monitor the compliance of eligible  
16 small businesses.  
17  
18

19 (c) By the first day of January of each year, the small  
20 business development center shall report on the linked  
21 deposit program for the preceding calendar year to the  
22 West Virginia development office, which shall then report  
23 to the joint committee on government and finance. The  
24 reports shall set forth the name of the small business,  
25 terms, delinquency and default rates, job growth, gross  
26 income evaluation and amounts of the loans upon which  
27 the linked deposits were based.

**§12-1A-7. Liability of state.**

1 The state, the treasurer, and the small business develop-  
2 ment center are not liable to any eligible lending institu-  
3 tion in any manner for payment of the principal or interest  
4 on the loan to an eligible small business. Any delay in  
5 payment or default on the part of an eligible small busi-

6   ness does not in any manner affect the deposit agreement  
7   between the eligible lending institution and the board.

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

1    Any person who violates this article is guilty of a  
2    misdemeanor and upon conviction thereof shall be fined  
3    not less than one hundred nor more than five hundred  
4    dollars or imprisoned in the county jail not less than one  
5    month nor more than one year.

**§12-1A-9. Effective dates.**

1    This article shall be effective from the first day of July,  
2    two thousand one, through the first day of July, two  
3    thousand six.



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

*Carroll Norz*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

*Donnell Glavin*  
.....  
Clerk of the Senate

*Boyd B. Boy*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

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

The within *is* approved this the *1st*  
Day of *May*, 2001.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/26/01

Time

5:35 pm