

**ENROLLED**

**Senate Bill No. 545**

(By Senators Nohe, Walters,  
Palumbo and Gaunch)

\_\_\_\_\_  
[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 a state-chartered banking institution  
2 to any one person or common enterprise and not fully secured, as determined in a manner consistent  
3 with subdivision (2) of this subsection, may not exceed fifteen percent of the unimpaired capital and  
4 unimpaired surplus of that state-chartered banking institution initially determined for the period such

1 loan or extension of credit is made.

2 (2) Where the total loans and extensions of credit by a state-chartered banking institution to  
3 any one person or common enterprise are fully secured by readily marketable collateral having a  
4 market value, as determined by reliable and continuously available price quotations, at least equal  
5 to the outstanding amount of such loans and extensions, then the bank may provide such loans or  
6 extensions of up to ten percent of the unimpaired capital and unimpaired surplus of that  
7 state-chartered banking institution initially determined for the period such loan or extension is made.  
8 This limitation shall be separate from and in addition to the limitation contained in subdivision (1)  
9 of this subsection.

10 (3) For the purposes of this subsection:

11 (A) The term "loans and extensions of credit" includes all direct or indirect advances of funds  
12 to a person made on the basis of any obligation of that person to repay the funds or repayable from  
13 specific property pledged by or on behalf of the person and to the extent specified by the  
14 Commissioner of Banking; the terms also include any liability of a state-chartered banking institution  
15 to advance funds to or on behalf of a person pursuant to a contractual commitment;

16 (B) The term "person" includes an individual, partnership, sole proprietorship, society,  
17 association, firm, institution, company, public or private corporation, not-for-profit corporation,  
18 state, governmental agency, bureau, department, division or instrumentality, political subdivision,  
19 county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever,  
20 formed, created or existing under the laws of this state or any other jurisdiction;

21 (C) The term "unimpaired capital and unimpaired surplus" means the amount of total equity  
22 capital outstanding as indicated in the bank's most recent quarterly report of condition and income

1 as filed with the Commissioner of Banking pursuant to section nineteen of this article, plus the  
2 amount of the allowance for loan losses, minus the amount of goodwill or other nonmarketable  
3 intangible assets included in the quarterly report pursuant to generally accepted accounting  
4 principles. Unrealized gains and losses on the bank's securities and loan portfolios shall be included  
5 in the calculation of total equity capital to the extent required by generally accepted accounting  
6 principles and applicable federal or state law, rule or regulation; and

7 (D) The term "common enterprise" includes, but is not limited to, persons and entities who  
8 are so related by business or otherwise that the expected source of repayment on the loan or  
9 extension of credit is substantially the same for each person or entity.

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

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

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

17 (C) Loans and extensions of credit having a term of ten months or less and secured by bills  
18 of lading, warehouse receipts or similar documents transferring or securing title to readily marketable  
19 staples are subject to a limitation of twenty percent of unimpaired capital and unimpaired surplus in  
20 addition to the general limitations set forth in subdivision (1) of this subsection, provided the market  
21 value of the staples securing each additional loan or extension of credit at all times equals or exceeds  
22 one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The

1 staples shall be fully covered by insurance whenever it is customary to insure the staples. If collateral  
2 values of the staples fall below the levels required herein, to the extent that the loan is no longer in  
3 conformance with its collateral requirements and exceeds the general fifteen percent limitation, the  
4 loan must be brought into conformance within five business days, except where judicial proceedings,  
5 regulatory actions or other extraordinary occurrences prevent the bank from taking action;

6 (D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or  
7 treasury bills of the United States or by other such obligations fully guaranteed as to principal and  
8 interest by the United States or by bonds, notes, certificates of indebtedness which are general  
9 obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal  
10 and interest by the state of West Virginia are not subject to any limitation based on capital and  
11 surplus;

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

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

18 (G) Loans or extensions of credit to any banking institution or to any receiver, conservator  
19 or other agent in charge of the business and property of such banking institution or other federally  
20 insured depository institution, when the loans or extensions of credit are approved by the  
21 Commissioner of Banking, are not subject to any limitation based on capital and surplus;

22 (H) (i) Loans and extensions of credit arising from the discount of negotiable or

1 nonnegotiable installment consumer paper which carries a full recourse endorsement or  
2 unconditional guarantee by the person or common enterprise transferring the paper are subject under  
3 this section to a maximum limitation equal to twenty-five percent of such unimpaired capital and  
4 unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this  
5 subsection;

6 (ii) If the bank's files or the knowledge of its officers of the financial condition of each maker  
7 of consumer paper is reasonably adequate and an officer of the bank designated for that purpose by  
8 the board of directors of the bank certifies in writing that the bank is relying primarily upon the  
9 responsibility of each maker for payment of such loans or extensions of credit and not upon any full  
10 or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to  
11 the loans or extensions of credit of each such maker are the sole applicable loan limitations;

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

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

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

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

8 (K) Loans or extensions of credit to a corporation owning the property in which that  
9 state-chartered banking institution is located, when that state-chartered banking institution has an  
10 unimpaired capital and surplus of not less than \$1 million or when approved in writing by the  
11 Commissioner of Banking, are not subject to any limitation based on capital and surplus.

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

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

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

21 (b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein  
22 contained authorizes the purchase by a state-chartered banking institution for its own account of any

1 shares of stock of any corporation: *Provided*, That a state-chartered banking institution may purchase  
2 and sell securities and stock without recourse, solely upon the order and for the account of  
3 customers.

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

8 (3) For purposes of this subsection:

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

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

22 (C) The term "unimpaired capital and unimpaired surplus" has the same meaning as set forth

1 in subsection (a) of this section.

2 (4) Notwithstanding any other provision of this subsection, a state-chartered banking  
3 institution may invest its funds in any investment authorized for national banking associations or for  
4 any other federally insured depository institution. The investments by state-chartered banking  
5 institutions shall be on the same terms and conditions applicable to national banking associations  
6 or any other federally insured depository institution: *Provided*, That: (i) The purchase of investment  
7 securities under this subdivision may be made only when in the bank's prudent judgment, which  
8 judgment may be based in part on estimates which it believes to be reliable, there is adequate  
9 evidence that the obligor will be able to perform all it undertakes to perform in connection with the  
10 securities, including all debt service requirements, and that the securities may be sold with  
11 reasonable promptness at a price that corresponds to their fair value; and (ii) the purchase conforms  
12 to the requirement of subdivision (5) of this subsection. The Commissioner of Banking may, from  
13 time to time, provide notice to state-chartered banking institutions of authorized investments under  
14 this paragraph.

15 (5) The purchase of investment securities, including derivative securities, in which the  
16 investment characteristics are considered distinctly or predominantly speculative, or the purchase  
17 of such securities that are in default, whether as to principal or interest, is prohibited. The proper  
18 management of interest rate risk through the use of derivative or other investment securities may not  
19 be held a speculative purpose.

20 (6) The Commissioner of Banking may prescribe rules to administer and carry out the  
21 purposes of this subsection, including rules to define or further define terms used in this subsection  
22 and to establish limits or requirements other than those specified in this subsection for particular

1 classes or categories of investment securities.

2 (c) If there is a material decline of unimpaired capital and unimpaired surplus of a  
3 state-chartered bank during any quarterly reporting period of more than twenty percent from that  
4 amount reported in the bank's most recent report of income and condition, or where there is a  
5 decrease of more than thirty percent in any twelve-month period, the bank shall review its  
6 outstanding loans, extensions of credit and investments and report to the Commissioner of Banking  
7 those loans, extensions and investments that exceed the limitations of this section using the bank's  
8 current reevaluated unimpaired capital and unimpaired surplus. The report shall detail the bank's  
9 position in each such loan, extension of credit and investment. The commissioner may, within his  
10 or her discretion, require that such loans, extensions of credit and investments be brought into  
11 conformity with the bank's current reevaluated legal lending and investment limitation.

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

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

20 (1) A director or executive officer of any banking institution may not borrow, directly or  
21 indirectly, from a banking institution with which he or she is connected any sum of money without  
22 the prior approval of a majority of the board of directors or discount committee of the banking

1 institution, or of any duly constituted committee whose duties include those usually performed by  
2 a discount committee. The approval shall be by resolution adopted by a majority vote of the board  
3 or committee, exclusive of the director or executive officer to whom the loan is made.

4 (2) If any director or executive officer of any bank owns or controls a majority of the stock  
5 of any corporation, or is a partner in any partnership, a loan to the corporation or partnership  
6 constitutes a loan to the director or officer.

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

8 (A) A person who participates or has authority to participate, other than in the capacity of a  
9 director, in major policy-making functions of the company or bank, regardless of any official title,  
10 salary or other compensation. The chairman of the board, the president, every vice president, the  
11 cashier, the secretary and the treasurer of a company or bank are considered executive officers unless  
12 the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or  
13 company from participation, other than in the capacity of director, in major policy-making functions  
14 of the bank or company and the officer does not actually participate therein.

15 (B) An executive officer of a company of which the bank is a subsidiary, and any other  
16 subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or  
17 by title, from participation in major policy-making functions of the bank by resolutions of the boards  
18 of directors of both the subsidiary and the bank and does not actually participate in such major  
19 policy-making functions.

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

21 (A) Payments of overdrafts pursuant to: (i) A written, preauthorized, interest-bearing  
22 extension of credit plan that has been approved by the board of directors or an appropriate committee

1 and that specifies a method of repayment; or (ii) a written, preauthorized transfer of funds from  
2 another account of the account holder at the bank; or

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

7 (f) An employee of the Division of Banking whose regulatory activities involve participation  
8 in an examination, audit, visitation, review, investigation or any other particular matter involving  
9 depository institutions chartered by the division may not borrow, directly or indirectly, any sum of  
10 money from a state-chartered bank or state-chartered credit union. An employee of the Division of  
11 Banking whose regulatory activities involve participation in an examination, audit, visitation, review,  
12 investigation or any other particular matter involving nondepository institutions licensed by the  
13 division may not borrow, directly or indirectly, any sum of money from a nondepository entity that  
14 is licensed by the division. The commissioner, deputy commissioner and in-house legal counsel of  
15 the Division of Banking may not borrow, directly or indirectly, any sum of money from any entity  
16 that is under the jurisdiction of the division.

17 (g) Securities purchased by a state-chartered banking institution shall be entered upon the  
18 books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to  
19 the payment of dividends, securities may not be valued at a valuation exceeding their present cost  
20 as determined by amortization of premiums and accretion of discounts pursuant to generally accepted  
21 accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at  
22 maturity: *Provided*, That securities held for trade or permissible marketable equity securities and any

1 other types of debt securities which pursuant to generally accepted accounting principles are to be  
2 carried on the bank's books at fair market value shall have the unrealized market appreciation and  
3 depreciation included in the income and capital as permitted by generally accepted accounting  
4 principles.

5 (h) The market value of securities purchased and loans extended by a state-chartered banking  
6 institution shall be reported in all public reports and quarterly reports to the commissioner pursuant  
7 to section nineteen of this article in accordance with generally accepted accounting principles and  
8 any applicable state or federal law, rule or regulation.