

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Introduced**

## **House Bill 4410**

BY DELEGATES NELSON, CRISS, WESTFALL, AZINGER,  
ESTEP-BURTON, LOVEJOY, ESPINOSA, BARRETT, BATES,

D. JEFFRIES AND CAPITO

[Introduced January 17, 2020; Referred to the  
Committee on Banking and Insurance then the  
Judiciary.]



1 A BILL to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended,  
2 relating to permitting directors and executive officers of a banking institution to borrow  
3 from a banking institution with which he or she is connected up to \$25,000 or five percent  
4 of unimpaired capital and surplus to a maximum aggregate amount of \$500,000 without  
5 the prior approval of a majority of the board of directors or discount committee of the  
6 banking institution.

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

**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  
2 institution to any one person or common enterprise and not fully secured, as determined in a  
3 manner consistent with subdivision (2) of this subsection, may not exceed 15 percent of the  
4 unimpaired capital and unimpaired surplus of that state-chartered banking institution initially  
5 determined for the period such loan or extension of credit is made.

6 (2) Where the total loans and extensions of credit by a state-chartered banking institution  
7 to any one person or common enterprise are fully secured by readily marketable collateral having  
8 a market value, as determined by reliable and continuously available price quotations, at least  
9 equal to the outstanding amount of such loans and extensions, then the bank may provide such  
10 loans or extensions of up to 10 percent of the unimpaired capital and unimpaired surplus of that  
11 state-chartered banking institution initially determined for the period such loan or extension is  
12 made. This limitation shall be separate from and in addition to the limitation contained in  
13 subdivision (1) of this subsection.

14 (3) For the purposes of this subsection:

15 (A) The term “loans and extensions of credit” includes all direct or indirect advances of  
16 funds to a person made on the basis of any obligation of that person to repay the funds or  
17 repayable from specific property pledged by or on behalf of the person and to the extent specified  
18 by the Commissioner of Financial Institutions; the terms also include any liability of a state-  
19 chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual  
20 commitment;

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

26 (C) The term “unimpaired capital and unimpaired surplus” means the amount of tier 1  
27 (core) capital, as defined in federal regulations, that is outstanding as indicated in the bank’s most  
28 recent quarterly report of condition and income as filed with the Commissioner of Financial  
29 Institutions pursuant to §31A-4-19 of this code, plus the amount of the allowance for loan losses;  
30 and

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

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

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

38 (B) The purchase of bankers’ acceptances of the kind described in Section 13 of the  
39 Federal Reserve Act and issued by other banks are not subject to any limitation based on capital  
40 and surplus;

41 (C) Loans and extensions of credit having a term of 10 months or less and secured by bills  
42 of lading, warehouse receipts or similar documents transferring or securing title to readily  
43 marketable staples are subject to a limitation of 20 percent of unimpaired capital and unimpaired  
44 surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided  
45 the market value of the staples securing each additional loan or extension of credit at all times  
46 equals or exceeds 115 percent of the outstanding amount of such loan or extension of credit. The  
47 staples shall be fully covered by insurance whenever it is customary to insure the staples. If  
48 collateral values of the staples fall below the levels required herein, to the extent that the loan is  
49 no longer in conformance with its collateral requirements and exceeds the general 15 percent  
50 limitation, the loan must be brought into conformance within five business days, except where  
51 judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from  
52 taking action;

53 (D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or  
54 treasury bills of the United States or by other such obligations fully guaranteed as to principal and  
55 interest by the United States or by bonds, notes, certificates of indebtedness which are general  
56 obligations of the State of West Virginia or by other such obligations fully guaranteed as to  
57 principal and interest by the State of West Virginia are not subject to any limitation based on  
58 capital and surplus;

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

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

65 (G) Loans or extensions of credit to any banking institution or to any receiver, conservator  
66 or other agent in charge of the business and property of such banking institution or other federally

67 insured depository institution, when the loans or extensions of credit are approved by the  
68 Commissioner of Financial Institutions, are not subject to any limitation based on capital and  
69 surplus;

70 (H) (i) Loans and extensions of credit arising from the discount of negotiable or  
71 nonnegotiable installment consumer paper which carries a full recourse endorsement or  
72 unconditional guarantee by the person or common enterprise transferring the paper are subject  
73 under this section to a maximum limitation equal to 25 percent of such unimpaired capital and  
74 unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this  
75 subsection;

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

82 (I)(i) Loans and extensions of credit secured by shipping documents or instruments  
83 transferring or securing title covering livestock or giving a lien on livestock when the market value  
84 of the livestock securing the obligation is not at any time less than 115 percent of the face amount  
85 of the note covered shall be subject under this section to a maximum limitation equal to 25 percent  
86 of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set  
87 forth in subdivision (2) of this subsection;

88 (ii) Loans and extensions of credit which arise from the discount by dealers in livestock of  
89 paper given in payment for livestock, which paper carries a full recourse endorsement or  
90 unconditional guarantee of the seller and which are secured by the livestock being sold, are  
91 subject under this section to a limitation of 25 percent of the unimpaired capital and unimpaired  
92 surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

93 (iii) If collateral values of the livestock documents, instruments or discount paper fall below  
94 the levels required herein, to the extent that the loan is no longer in conformance with its collateral  
95 requirements and exceeds the general 15 percent limitation, the loan must be brought into  
96 conformance within 30 business days, except where judicial proceedings, regulatory actions or  
97 other extraordinary occurrences prevent the bank from taking action;

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

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

105 (5) (A) The Commissioner of Financial Institutions may prescribe rules to administer and  
106 carry out the purposes of this subsection including rules to define or further define terms used in  
107 this subsection and to establish limits or requirements other than those specified in this subsection  
108 for particular classes or categories of loans or extensions of credit;

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

112 (C) The Commissioner of Financial Institutions may also determine when a loan putatively  
113 made to a person is, for purposes of this subsection, attributed to another person.

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

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

123           (3) For purposes of this subsection:

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

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

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

139           (4) Notwithstanding any other provision of this subsection, a state-chartered banking  
140 institution may invest its funds in any investment authorized for national banking associations or  
141 for any other federally insured depository institution. The investments by state-chartered banking  
142 institutions shall be on the same terms and conditions applicable to national banking associations  
143 or any other federally insured depository institution: *Provided, That:* (i) The purchase of  
144 investment securities under this subdivision may be made only when in the bank’s prudent

145 judgment, which judgment may be based in part on estimates which it believes to be reliable,  
146 there is adequate evidence that the obligor will be able to perform all it undertakes to perform in  
147 connection with the securities, including all debt service requirements, and that the securities may  
148 be sold with reasonable promptness at a price that corresponds to their fair value; and (ii) the  
149 purchase conforms to the requirement of subdivision (5) of this subsection. The Commissioner of  
150 Financial Institutions may, from time to time, provide notice to state-chartered banking institutions  
151 of authorized investments under this paragraph.

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

157 (6) The Commissioner of Financial Institutions may prescribe rules to administer and carry  
158 out the purposes of this subsection, including rules to define or further define terms used in this  
159 subsection and to establish limits or requirements other than those specified in this subsection for  
160 particular classes or categories of investment securities.

161 (c) If there is a material decline of unimpaired capital and unimpaired surplus of a state-  
162 chartered bank during any quarterly reporting period of more than 20 percent from that amount  
163 reported in the bank's most recent report of income and condition, or where there is a decrease  
164 of more than 30 percent in any 12 month period, the bank shall review its outstanding loans,  
165 extensions of credit and investments and report to the Commissioner of Financial Institutions  
166 those loans, extensions and investments that exceed the limitations of this section using the  
167 bank's current reevaluated unimpaired capital and unimpaired surplus. The report shall detail the  
168 bank's position in each such loan, extension of credit and investment. The commissioner may,  
169 within his or her discretion, require that such loans, extensions of credit and investments be

170 brought into conformity with the bank's current reevaluated legal lending and investment  
171 limitation.

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

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

180 (1) A director or executive officer of any banking institution may not borrow, directly or  
181 indirectly, from a banking institution with which he or she is connected ~~any sum of money more~~  
182 than \$25,000 or five percent of unimpaired capital and surplus to a maximum aggregate amount  
183 of \$500,000 without the prior approval of a majority of the board of directors or discount committee  
184 of the banking institution, or of any duly constituted committee whose duties include those usually  
185 performed by a discount committee. The approval shall be by resolution adopted by a majority  
186 vote of the board or committee, exclusive of the director or executive officer to whom the loan is  
187 made.

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

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

192 (A) A person who participates or has authority to participate, other than in the capacity of  
193 a director, in major policy-making functions of the company or bank, regardless of any official title,  
194 salary or other compensation. The chairman of the board, the president, every vice president, the  
195 cashier, the secretary and the treasurer of a company or bank are considered executive officers

196 unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank  
197 or company from participation, other than in the capacity of director, in major policy-making  
198 functions of the bank or company and the officer does not actually participate therein.

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

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

205 (A) Payments of overdrafts pursuant to: (i) A written, preauthorized, interest-bearing  
206 extension of credit plan that has been approved by the board of directors or an appropriate  
207 committee and that specifies a method of repayment; or (ii) a written, preauthorized transfer of  
208 funds from another account of the account holder at the bank; or

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

213 (f) An employee of the Division of Financial Institutions whose regulatory activities involve  
214 participation in an examination, audit, visitation, review, investigation or any other particular matter  
215 involving depository institutions chartered by the division may not borrow, directly or indirectly,  
216 any sum of money from a state-chartered bank or state-chartered credit union. An employee of  
217 the Division of Financial Institutions whose regulatory activities involve participation in an  
218 examination, audit, visitation, review, investigation or any other particular matter involving  
219 nondepository institutions licensed by the division may not borrow, directly or indirectly, any sum  
220 of money from a nondepository entity that is licensed by the division. The commissioner, deputy

221 commissioner and in-house legal counsel of the Division of Financial Institutions may not borrow,  
222 directly or indirectly, any sum of money from any entity that is under the jurisdiction of the division.

223 (g) Securities purchased by a state-chartered banking institution shall be entered upon the  
224 books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to  
225 the payment of dividends, securities may not be valued at a valuation exceeding their present  
226 cost as determined by amortization of premiums and accretion of discounts pursuant to generally  
227 accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring  
228 them to par at maturity: *Provided*, That securities held for trade or permissible marketable equity  
229 securities and any other types of debt securities which pursuant to generally accepted accounting  
230 principles are to be carried on the bank's books at fair market value shall have the unrealized  
231 market appreciation and depreciation included in the income and capital as permitted by generally  
232 accepted accounting principles.

233 (h) The market value of securities purchased and loans extended by a state-chartered  
234 banking institution shall be reported in all public reports and quarterly reports to the commissioner  
235 pursuant to §31A-4-19 of this code in accordance with generally accepted accounting principles  
236 and any applicable state or federal law, rule or regulation.

NOTE: The purpose of this bill is to permit directors and executive officers of a banking institution to borrow from a banking institution with which he or she is connected up to \$25,000 or 5 percent of unimpaired capital and surplus to a maximum aggregate amount of \$500,000 without the prior approval of a majority of the board of directors or discount committee of the banking institution.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.