

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 453**

BY SENATORS AZINGER AND CLINE

[Introduced January 29, 2019; Referred  
to the Committee on Banking and Insurance]



1 A BILL to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating  
2 to background checks of certain financial institutions; allowing commissioner to accept  
3 alternate report forms in limited circumstances for certain non-United States based  
4 principals or owners; and making technical corrections.

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

**ARTICLE 2. DIVISION OF ~~BANKING~~ FINANCIAL INSTITUTIONS.**

**§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to  
commissioner; powers and duties of commissioner.**

1 (a) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, the  
2 commissioner has supervision and jurisdiction over state banks, regulated consumer lenders,  
3 residential mortgage lenders, and brokers licensed pursuant to §31-17-1 *et seq.* of this code,  
4 credit unions, and all other persons now or hereafter made subject to his or her supervision or  
5 jurisdiction. All powers, duties, rights, and privileges vested in the division are hereby vested in  
6 the commissioner. He or she shall be the chief executive officer of the Division of ~~Banking~~  
7 Financial Institutions and is responsible for the division' s organization, services, and personnel  
8 and for the orderly and efficient administration, enforcement, and execution of the provisions of  
9 this chapter and all laws vesting authority or powers in or prescribing duties or functions for the  
10 division or the commissioner.

11 (b) The commissioner shall:

12 (1) Maintain an office for the division and there keep a complete record of all the division'  
13 s transactions, of the financial conditions of all financial institutions, and records of the activities  
14 of other persons as the commissioner considers important. Notwithstanding any other provision  
15 of this code, heretofore or hereafter enacted, the records relating to the financial condition of any  
16 financial institution and any information contained in the records shall be confidential for the use  
17 of the commissioner and authorized personnel of the Division of ~~Banking~~ Financial Institutions.

18 No person shall divulge any information contained in any records except as authorized in this  
19 subdivision in response to a valid subpoena or subpoena duces tecum issued pursuant to law in  
20 a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory  
21 authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure  
22 of relevant records and information from the records for good cause, upon imposing terms and  
23 conditions considered necessary to protect the confidential nature of the records, the financial  
24 integrity of the financial institution or the person to which the records relate and the legitimate  
25 privacy interests of any individual named in the records. Conformity with federal procedures shall  
26 be sought where the institution maintains federal deposit insurance. The commissioner has and  
27 may exercise reasonable discretion as to the time, manner, and extent the other records in his or  
28 her office and the information contained in the records are available for public examination;

29 (2) Require all financial institutions to comply with all the provisions of this chapter and  
30 other applicable laws, or any rule promulgated or order issued thereunder;

31 (3) Investigate all alleged violations of this chapter and all other laws which he or she is  
32 required to enforce and of any rule promulgated or order issued thereunder; and

33 (4) Require a criminal background investigation, including requiring fingerprints for  
34 submission to the Federal Bureau of Investigation or any governmental agency or entity  
35 authorized to receive such information for a state, national, or international criminal history check,  
36 of each:

37 (A) Applicant seeking approval to charter and/or control a state bank, state credit union,  
38 or a foreign bank state agency or representative office;

39 (B) Applicant seeking a license to engage in the business of money transmission, currency  
40 exchange, or other activity regulated under §32A-2-1 *et seq.* of this code;

41 (C) Applicant subject to the commissioner' s supervision seeking a license to engage in  
42 the business of regulated consumer lending, mortgage lending, or brokering; and

43 (D) Division of ~~Banking~~ Financial Institutions regulatory employee applicant ~~Provided,~~  
44 ~~That~~ The provisions of this subdivision are not applicable where the applicant is a company or  
45 entity already subject to supervision and regulation by the Federal Reserve Board or other federal  
46 bank, thrift, or credit union regulator, or is a direct or indirect subsidiary of a company or entity  
47 subject to the supervision and regulation, or where the applicant is a company subject to the  
48 supervision and regulation of the federal Securities and Exchange Commission whose stock is  
49 publicly traded on a registered exchange or through the National Association of Securities Dealers  
50 automated quotation system, or the applicant is a direct or indirect subsidiary of such a company,  
51 the investigation into criminal background is not required. The provisions of this subdivision are  
52 not applicable to applicants seeking interim bank charters organized solely for the purpose of  
53 facilitating the acquisition of another bank pursuant to §31A-4-5 of this code. ~~Provided, however,~~  
54 ~~That~~ The requirements of this subdivision are applicable to the principals of the applicant where  
55 a nonexempt applicant under this subdivision is not a natural person. ~~the principals of the~~  
56 ~~applicant are subject to the requirements of this subdivision~~ As used in this subdivision, the term  
57 “principals” means the chief executive officer, regardless of title, managing partner if a  
58 partnership, members of the organizing group if no chief executive officer has yet been appointed,  
59 trustee, or other person controlling the conduct of the affairs of a licensee. A person controlling  
60 10 percent or more of the stock of any corporate applicant shall be considered to be a principal  
61 under this provision. Notwithstanding any other provision of §31-17-4 of this code or this  
62 subdivision to the contrary, the commissioner may determine alternate acceptable forms for  
63 background check information for direct or indirect principals of a licensee or applicant for a  
64 mortgage lender or broker license or a money transmission license who are not residents of the  
65 United States if such licensee or applicant also has owners or principals who are residents of the  
66 United States and the division has been provided adequate background information, as provided  
67 in this subdivision, for such owners or principals of the licensee or applicant who are United States  
68 residents. The commissioner may establish relationships or contracts with the Nationwide

69 Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage  
70 Licensing System and Registry to collect and maintain records related to criminal background  
71 investigations and fingerprints of persons subject to this subsection.

72       ~~(A)~~ To reduce the points of contact which the Federal Bureau of Investigation may have  
73 to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry  
74 or its designated vendor as a channeling agent for requesting information from and distributing  
75 information to the Department of Justice or any governmental agency.

76       ~~(B)~~ To reduce the points of contact which the commissioner may have to maintain, the  
77 commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling  
78 agent for requesting and distributing information to and from any source so directed by the  
79 commissioner.

80       (c) In addition to all other authority and powers vested in the commissioner by provisions  
81 of this chapter and other applicable laws, the commissioner may:

82       (1) Provide for the organization of the division and the procedures and practices of the  
83 division and implement the procedures and practices by the promulgation of rules and forms as  
84 appropriate and the rules shall be promulgated in accordance with §29A-3-1 *et seq.* of this code;

85       (2) Employ, direct, discipline, discharge, and establish qualifications and duties for all  
86 personnel for the division, including, but not limited to, examiners, assistant examiners,  
87 conservators, and receivers, establish the amount and condition of bonds for the personnel he or  
88 she considers appropriate and pay the premiums on the bonds and, if he or she elects, have all  
89 personnel subject to and under the classified service of the state personnel division;

90       (3) Cooperate with organizations, agencies, committees, and other representatives of  
91 financial institutions of the state in connection with schools, seminars, conferences, and other  
92 meetings to improve the responsibilities, services, and stability of the financial institutions;

93       (4) In addition to the examinations required by §31A-2-6 of this code, inspect, examine,  
94 and audit the books, records, accounts, and papers of all financial institutions and any third-party

95 vendor providing information technology services to financial institutions at such times as  
96 circumstances in his or her opinion may warrant;

97 (5) Call for and require any data, reports, and information from financial institutions under  
98 his or her jurisdiction, at such times and in such form, content, and detail considered necessary  
99 by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of  
100 the financial institutions;

101 (6) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, supervise  
102 the location, organization, practices, and procedures of financial institutions and, without limitation  
103 on the general powers of supervision of financial institutions, require financial institutions to:

104 (A) Maintain their accounts consistent with rules prescribed by the commissioner and in  
105 accordance with generally accepted accounting practices;

106 (B) Observe methods and standards which he or she may prescribe for determining the  
107 value of various types of assets;

108 (C) Charge off the whole or any part of an asset which at the time of his or her action could  
109 not lawfully be acquired;

110 (D) Write down an asset to its market value;

111 (E) Record or file writings creating or evidencing liens or other interests in property;

112 (F) Obtain financial statements from prospective and existing borrowers;

113 (G) Obtain insurance against damage and loss to real estate and personal property taken  
114 as security;

115 (H) Maintain adequate insurance against other risks as he or she may determine to be  
116 necessary and appropriate for the protection of depositors and the public;

117 (I) Maintain an adequate fidelity bond or bonds on its officers and employees;

118 (J) Take other action that in his or her judgment is required of the institution in order to  
119 maintain its stability, integrity, and security as required by law and all rules promulgated by him  
120 or her; and

121 (K) Verify any or all asset or liability accounts;

122 (7) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, receive  
123 from any person or persons and consider any request, petition, or application relating to the  
124 organization, location, conduct, services, policies, and procedures of any financial institution and  
125 to act on the request, petition, or application in accordance with any provisions of law applicable  
126 thereto;

127 (8) In connection with the investigations required by §31A-2-4(b)(3) of this code, issue  
128 subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and  
129 hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served,  
130 and enforced in the manner provided in §29A-5-1 of this code. Any person appearing and  
131 testifying at a hearing may be accompanied by an attorney employed by him or her;

132 (9) Issue declaratory rulings in accordance with the provisions of §29A-4-1 of this code;

133 (10) Study and survey the location, size, and services of financial institutions, the  
134 geographic, industrial, economic, and population factors affecting the agricultural, commercial,  
135 and social life of the state, and the needs for reducing, expanding, or otherwise modifying the  
136 services and facilities of financial institutions in the various parts of the state, and compile and  
137 keep current data thereon to aid and guide him or her in the administration of the duties of his or  
138 her office;

139 (11) Implement all of the provisions of this chapter, except the provisions of §31A-3-1 *et*  
140 *seq.* of this code, and all other laws which he or she is empowered to administer and enforce by  
141 the promulgation of rules in accordance with the provisions of §29A-3-1 *et seq.* of this code;

142 (12) Implement the provisions of chapter 46A of this code applicable to consumer loans  
143 and consumer credit sales by the promulgation of rules in accordance with the provisions of §29A-  
144 3-1 *et seq.* of this code as long as the rules do not conflict with any rules promulgated by the state'  
145 s Attorney General;



146 (13) Foster and encourage a working relationship between the Division of ~~Banking~~  
147 Financial Institutions and financial institutions, credit, consumer, mercantile, and other  
148 commercial and finance groups and interests in the state in order to make current appraisals of  
149 the quality, stability, and availability of the services and facilities of financial institutions;

150 (14) Provide to financial institutions and the public copies of the West Virginia statutes  
151 relating to financial institutions, suggested drafts of bylaws commonly used by financial  
152 institutions, and any other forms and printed materials found by him or her to be helpful to financial  
153 institutions, their shareholders, depositors, and patrons and make reasonable charges for the  
154 copies;

155 (15) Delegate the powers and duties of his or her office, other than the powers and duties  
156 excepted in this subdivision, to qualified division personnel who shall act under the direction and  
157 supervision of the commissioner and for whose acts he or she is responsible, but the  
158 commissioner may delegate to the deputy commissioner of ~~banking~~ financial institutions and to  
159 no other division personnel the following powers, duties and responsibilities, all of which are  
160 hereby granted to and vested in the commissioner and for all of which the commissioner also is  
161 responsible. The commissioner shall:

162 (A) Order any person to cease violating any provision or provisions of this chapter or other  
163 applicable law or any rule promulgated or order issued thereunder;

164 (B) Order any person to cease engaging in any unsound practice or procedure which may  
165 detrimentally affect any financial institution or depositor of the financial institution;

166 (C) Revoke the certificate of authority, permit, or license of any financial institution except  
167 a banking institution in accordance with the provisions of §31A-2-13 of this code; and

168 (D) Accept an assurance in writing that the person will not in the future engage in the  
169 conduct alleged by the commissioner to be unlawful, which could be subject to an order under  
170 the provisions of this chapter. This assurance of voluntary compliance shall not be considered an  
171 admission of violation for any purpose, except that if a person giving the assurance fails to comply

172 with its terms, the assurance is prima facie evidence that prior to this assurance the person  
173 engaged in conduct described in the assurance;

174 (16) Seek and obtain civil administrative penalties against any person who violates this  
175 chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the  
176 commissioner or board of banking and financial institutions in an amount not more than \$5,000  
177 per day for each violation: *Provided*, That all of the pertinent provisions of §29A-5-1 *et seq.* of this  
178 code shall apply to any assessment of a penalty under this subsection;

179 (17) Receive from state banking institutions applications to change the locations of their  
180 principal offices and to approve or disapprove these applications;

181 (18) Expend funds in order to promote consumer awareness and understanding of issues  
182 related to residential mortgage lending. In furtherance of this duty, there is established in the State  
183 Treasury a special revenue account to be known as the Consumer Education Fund, which shall  
184 be administered by the Commissioner of ~~Banking~~ Financial Institutions. Ten percent of all civil  
185 administrative penalties collected by the Division of ~~Banking~~ Financial Institutions during each  
186 fiscal year shall be deposited into the fund and may be expended by the commissioner to promote  
187 consumer awareness and understanding of issues related to residential mortgage lending. The  
188 account shall be a special revenue account and may be invested and retain all earnings and  
189 interest. Any remaining balance less than \$500,000, including accrued interest, in the fund at the  
190 end of the fiscal year shall not revert to the General Revenue Fund, but shall remain in the  
191 account. Any balance which exceeds \$500,000 as of June 30, 2012, and each year thereafter,  
192 shall revert to the General Revenue Fund; and

193 (19) Take other action as he or she may consider necessary to enforce and administer the  
194 provisions of this chapter, except the provisions of §31A-3-1 *et seq.* of this code, and all other  
195 laws which he or she is empowered to administer and enforce and apply to any court of competent  
196 jurisdiction for appropriate orders, writs, processes, and remedies.

NOTE: The purpose of this bill is to grant flexibility to the commissioner in the administration of the licensing programs for mortgage lending and brokering and money transmission by clarifying who must submit official criminal history information and to facilitate effective and efficient review of license applications. The bill also changes the Division of Banking to Division of Financial Institutions.

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