

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Enrolled**

**Senate Bill 453**

BY SENATORS AZINGER AND CLINE

[Passed March 1, 2019; in effect 90 days from passage]



1 AN ACT 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 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 Financial  
7 Institutions and is responsible for the division's organization, services, and personnel and for the  
8 orderly and efficient administration, enforcement, and execution of the provisions of this chapter  
9 and all laws vesting authority or powers in, or prescribing duties or functions for, the division or  
10 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's  
13 transactions, of the financial conditions of all financial institutions, and records of the activities of  
14 other persons as the commissioner considers important. Notwithstanding any other provision of  
15 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 Financial Institutions. No person  
18 shall divulge any information contained in any records except as authorized in this subdivision in

19 response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal  
20 proceeding or in a civil enforcement action brought by the state or federal regulatory authorities.  
21 Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant  
22 records and information from the records for good cause, upon imposing terms and conditions  
23 considered necessary to protect the confidential nature of the records, the financial integrity of  
24 the financial institution, or the person to which the records relate, and the legitimate privacy  
25 interests of any individual named in the records. Conformity with federal procedures shall be  
26 sought where the institution maintains federal deposit insurance. The commissioner has and may  
27 exercise reasonable discretion as to the time, manner, and extent the other records in his or her  
28 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 Financial Institutions regulatory employee applicants.

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

69 and Registry to collect and maintain records related to criminal background investigations and  
70 fingerprints of persons subject to this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2019.

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*Governor*