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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

*REGULAR SESSION, 2002*

**ENROLLED**

*Com. Sub. for Com. Sub. for*

SENATE BILL NO. 282

(By Senator MUNROD, ET AL)

PASSED MARCH 9, 2002

In Effect NINETY DAYS FROM Passage

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COMMITTEE SUBSTITUTE

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**Senate Bill No. 282**

(SENATORS MINARD, KESSLER, HELMICK  
AND HUNTER, *original sponsors*)

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[Passed March 9, 2002; in effect ninety days from passage.]

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AN ACT to amend and reenact section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of the commissioner of banking; and eliminating the requirement that the commissioner maintain an office at the capitol complex.

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

That section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. DIVISION OF BANKING.**

**§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 article  
2 three of this chapter, the commissioner has supervision  
3 and jurisdiction over state banks, regulated consumer  
4 lenders, second mortgage lenders and brokers, credit  
5 unions and all other persons now or hereafter made  
6 subject to his or her supervision or jurisdiction. All  
7 powers, duties, rights and privileges vested in the division  
8 are hereby vested in the commissioner. He or she shall be  
9 the chief executive officer of the division of banking and  
10 is responsible for the division's organization, services and  
11 personnel and for the orderly and efficient administration,  
12 enforcement and execution of the provisions of this  
13 chapter and all laws vesting authority or powers in or  
14 prescribing duties or functions for the division or the  
15 commissioner.

16 (b) The commissioner shall:

17 (1) Maintain an office for the division and there keep a  
18 complete record of all the division's transactions, of the  
19 financial conditions of all financial institutions and  
20 records of the activities of other persons as the commis-  
21 sioner considers important. Notwithstanding any other  
22 provision of this code, heretofore or hereafter enacted, the  
23 records relating to the financial condition of any financial  
24 institution and any information contained in the records  
25 shall be confidential for the use of the commissioner and  
26 authorized personnel of the division of banking. No  
27 person shall divulge any information contained in any  
28 records except as authorized in this subdivision in re-  
29 sponse to a valid subpoena or subpoena duces tecum issued  
30 pursuant to law in a criminal proceeding or in a civil  
31 enforcement action brought by the state or federal regula-  
32 tory authorities. Subpoenas shall first be directed to the

33 commissioner, who shall authorize disclosure of relevant  
34 records and information from the records for good cause,  
35 upon imposing terms and conditions considered necessary  
36 to protect the confidential nature of the records, the  
37 financial integrity of the financial institution or the person  
38 to which the records relate, and the legitimate privacy  
39 interests of any individual named in the records. Confor-  
40 mity with federal procedures shall be sought where the  
41 institution maintains federal deposit insurance. The  
42 commissioner has and may exercise reasonable discretion  
43 as to the time, manner and extent the other records in his  
44 or her office and the information contained in the records  
45 are available for public examination;

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

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

52 (4) Require a criminal background investigation, includ-  
53 ing fingerprint checks, of each: (A) Applicant seeking  
54 approval to charter and/or control a state bank, state  
55 credit union, or a foreign bank state agency or representa-  
56 tive office; (B) applicant seeking a license to engage in the  
57 business of money transmission, currency exchange, or  
58 other activity regulated under article two, chapter thirty-  
59 two-a of this code; (C) applicant subject to the commis-  
60 sioner's supervision seeking a license to engage in the  
61 business of regulated consumer lending, mortgage lending  
62 or brokering; and (D) division of banking financial institu-  
63 tions regulatory employee applicant, to be made through  
64 the West Virginia state police and the federal bureau of  
65 investigation: *Provided*, That where the applicant is a  
66 company or entity already subject to supervision and  
67 regulation by the federal reserve board or other federal  
68 bank, thrift or credit union regulator, or is a direct or  
69 indirect subsidiary of a company or entity subject to the

70 supervision and regulation, or where the applicant is a  
71 company subject to the supervision and regulation of the  
72 federal securities and exchange commission whose stock  
73 is publicly traded on a registered exchange or through the  
74 national association of securities dealers automated  
75 quotation system, or the applicant is a direct or indirect  
76 subsidiary of such a company, the investigation into  
77 criminal background is not required. The provisions of  
78 this subdivision are not applicable to applicants seeking  
79 interim bank charters organized solely for the purpose of  
80 facilitating the acquisition of another bank pursuant to  
81 section five, article four of this chapter: *Provided, how-*  
82 *ever,* That where a nonexempt applicant under this  
83 subdivision is not a natural person, the principals of the  
84 applicant are subject to the requirements of this subdivi-  
85 sion. As used in this subdivision, the term "principals"  
86 means the chief executive officer, regardless of title,  
87 managing partner if a partnership, members of the orga-  
88 nizing group if no chief executive officer has yet been  
89 appointed, trustee or other person controlling the conduct  
90 of the affairs of a licensee. A person controlling ten  
91 percent or more of the stock of any corporate applicant  
92 shall be considered to be a principal under this provision.

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

96 (1) Provide for the organization of the division and the  
97 procedures and practices of the division and implement  
98 the procedures and practices by the promulgation of rules  
99 and forms as appropriate and the rules shall be promul-  
100 gated in accordance with article three, chapter  
101 twenty-nine-a of this code;

102 (2) Employ, direct, discipline, discharge and establish  
103 qualifications and duties for all personnel for the division,  
104 including, but not limited to, examiners, assistant examin-  
105 ers, conservators and receivers, establish the amount and  
106 condition of bonds for the personnel he or she considers

107 appropriate and pay the premiums on the bonds and, if he  
108 or she elects, have all personnel subject to and under the  
109 classified service of the state personnel division;

110 (3) Cooperate with organizations, agencies, committees  
111 and other representatives of financial institutions of the  
112 state in connection with schools, seminars, conferences  
113 and other meetings to improve the responsibilities, services  
114 and stability of the financial institutions;

115 (4) In addition to the examinations required by section  
116 six of this article, inspect, examine and audit the books,  
117 records, accounts and papers of all financial institutions at  
118 such times as circumstances in his or her opinion may  
119 warrant;

120 (5) Call for and require any data, reports and informa-  
121 tion from financial institutions under his or her jurisdic-  
122 tion, at such times and in such form, content and detail  
123 considered necessary by him or her in the faithful dis-  
124 charge of his or her duties and responsibilities in the  
125 supervision of the financial institutions;

126 (6) Subject to the powers vested in the board by article  
127 three of this chapter, supervise the location, organization,  
128 practices and procedures of financial institutions and,  
129 without limitation on the general powers of supervision of  
130 financial institutions, require financial institutions to:

131 (A) Maintain their accounts consistent with rules pre-  
132 scribed by the commissioner and in accordance with  
133 generally accepted accounting practices;

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

137 (C) Charge off the whole or any part of an asset which at  
138 the time of his or her action could not lawfully be ac-  
139 quired;

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

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

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

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

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

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

152 (J) Take other action that in his or her judgment is  
153 required of the institution in order to maintain its stabil-  
154 ity, integrity and security as required by law and all rules  
155 promulgated by him or her; and

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

157 (7) Subject to the powers vested in the board by article  
158 three of this chapter, receive from any person or persons  
159 and consider any request, petition or application relating  
160 to the organization, location, conduct, services, policies  
161 and procedures of any financial institution and to act on  
162 the request, petition or application in accordance with any  
163 provisions of law applicable thereto;

164 (8) In connection with the investigations required by  
165 subdivision (3), subsection (b) of this section, issue subpoe-  
166 nas and subpoenas duces tecum, administer oaths, exam-  
167 ine persons under oath, and hold and conduct hearings.  
168 Any subpoenas or subpoenas duces tecum shall be issued,  
169 served and enforced in the manner provided in section one,  
170 article five, chapter twenty-nine-a of this code. Any  
171 person appearing and testifying at a hearing may be  
172 accompanied by an attorney employed by him or her;

173 (9) Issue declaratory rulings in accordance with the

174 provisions of section one, article four, chapter twenty-  
175 nine-a of this code;

176 (10) Study and survey the location, size and services of  
177 financial institutions, the geographic, industrial, economic  
178 and population factors affecting the agricultural, commer-  
179 cial and social life of the state and the needs for reducing,  
180 expanding or otherwise modifying the services and  
181 facilities of financial institutions in the various parts of  
182 the state and compile and keep current data thereon to aid  
183 and guide him or her in the administration of the duties of  
184 his or her office;

185 (11) Implement all of the provisions of this chapter,  
186 except the provisions of article three of this chapter, and  
187 all other laws which he or she is empowered to administer  
188 and enforce by the promulgation of rules in accordance  
189 with the provisions of article three, chapter twenty-nine-a  
190 of this code;

191 (12) Implement the provisions of chapter forty-six-a of  
192 this code applicable to consumer loans and consumer  
193 credit sales by the promulgation of rules in accordance  
194 with the provisions of article three, chapter twenty-nine-a  
195 of this code as long as the rules do not conflict with any  
196 rules promulgated by the state's attorney general;

197 (13) Foster and encourage a working relationship  
198 between the division of banking and financial institutions,  
199 credit, consumer, mercantile and other commercial and  
200 finance groups and interests in the state in order to make  
201 current appraisals of the quality, stability and availability  
202 of the services and facilities of financial institutions;

203 (14) Provide to financial institutions and the public  
204 copies of the West Virginia statutes relating to financial  
205 institutions, suggested drafts of bylaws commonly used by  
206 financial institutions and any other forms and printed  
207 materials found by him or her to be helpful to financial  
208 institutions, their shareholders, depositors and patrons and  
209 make reasonable charges for the copies;



210 (15) Delegate the powers and duties of his or her office,  
211 other than the powers and duties excepted in this subdivi-  
212 sion, to qualified division personnel who shall act under  
213 the direction and supervision of the commissioner and for  
214 whose acts he or she is responsible, but the commissioner  
215 may delegate to the deputy commissioner of banking and  
216 to noother division personnel the following powers, duties  
217 and responsibilities, all of which are hereby granted to and  
218 vested in the commissioner and for all of which the  
219 commissioner also is responsible. The commissioner shall:

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

223 (B) Order any person to cease engaging in any unsound  
224 practice or procedure which may detrimentally affect any  
225 financial institution or depositor of the financial institu-  
226 tion;

227 (C) Revoke the certificate of authority, permit or license  
228 of any financial institution except a banking institution in  
229 accordance with the provisions of section thirteen of this  
230 article; and

231 (D) Accept an assurance in writing that the person will  
232 not in the future engage in the conduct alleged by the  
233 commissioner to be unlawful, which could be subject to an  
234 order under the provisions of this chapter. This assurance  
235 of voluntary compliance shall not be considered an  
236 admission of violation for any purpose, except that if a  
237 person giving the assurance fails to comply with its terms,  
238 the assurance is prima facie evidence that prior to this  
239 assurance the person engaged in conduct described in the  
240 assurance;

241 (16) Seek and obtain from courts civil penalties against  
242 any person who violates this chapter, the rules issued  
243 pursuant to this chapter, or any orders lawfully entered by  
244 the commissioner or board of banking and financial

245 institutions in an amount not less than fifty dollars nor  
246 more than five thousand dollars for each violation;

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

250 (18) Take other action as he or she may consider neces-  
251 sary to enforce and administer the provisions of this  
252 chapter, except the provisions of article three of this  
253 chapter, and all other laws which he or she is empowered  
254 to administer and enforce and apply to any court of  
255 competent jurisdiction for appropriate orders, writs,  
256 processes and remedies.

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

*Cathy Anne*  
.....  
Chairman Senate Committee

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

Originated in the Senate.

In effect ninety days from passage.

*Barrel E. Blum*  
.....  
Clerk of the Senate

*Gregory A. 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 25<sup>th</sup>  
Day of March, 2002.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/02

Time 9:00 a.m.