

1 governmental agency; providing that the Commissioner of
2 Banking may use the Nationwide Mortgage Licensing System and
3 Registry as a channeling agent for requesting and distributing
4 information to and from any source so directed by the
5 Commissioner; authorizing the Commissioner of Banking to
6 conduct examinations of third-party providers of information
7 technology services to financial institutions; creating a
8 special revenue account to be known as the Consumer Education
9 Fund, which may be expended by the commissioner to promote
10 consumer awareness and understanding of issues related to
11 residential mortgage lending; providing that ten percent of
12 all civil administrative penalties collected by the Division
13 of Banking during each fiscal year shall be deposited into
14 that account, which may be invested and retain all earnings
15 and interest; and providing that at the end of each fiscal
16 year, any remaining balance less than \$500,000, including
17 accrued interest, shall remain in the account and that any
18 balance exceeding \$500,000 shall revert to the General Revenue
19 Fund.

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

21 That §31A-2-4 of the Code of West Virginia, 1931, as amended,
22 be amended and reenacted to read as follows:

23 **ARTICLE 2. DIVISION OF BANKING.**

1 **§31A-2-4. Jurisdiction of commissioner; powers, etc., of division**
2 **transferred to commissioner; powers and duties of**
3 **commissioner.**

4 (a) Subject to the powers vested in the board by article three
5 of this chapter, the commissioner has supervision and jurisdiction
6 over state banks, regulated consumer lenders, residential mortgage
7 lenders and brokers licensed pursuant to article seventeen, chapter
8 thirty-one of this code, credit unions and all other persons now or
9 hereafter made subject to his or her supervision or jurisdiction.
10 All powers, duties, rights and privileges vested in the division
11 are hereby vested in the commissioner. He or she shall be the chief
12 executive officer of the Division of Banking and is responsible for
13 the division's organization, services and personnel and for the
14 orderly and efficient administration, enforcement and execution of
15 the provisions of this chapter and all laws vesting authority or
16 powers in or prescribing duties or functions for the division or
17 the commissioner.

18 (b) The commissioner shall:

19 (1) Maintain an office for the division and there keep a
20 complete record of all the division's transactions, of the
21 financial conditions of all financial institutions and records of
22 the activities of other persons as the commissioner considers
23 important. Notwithstanding any other provision of this code,

1 heretofore or hereafter enacted, the records relating to the
2 financial condition of any financial institution and any
3 information contained in the records shall be confidential for the
4 use of the commissioner and authorized personnel of the Division of
5 Banking. No person shall divulge any information contained in any
6 records except as authorized in this subdivision in response to a
7 valid subpoena or subpoena duces tecum issued pursuant to law in a
8 criminal proceeding or in a civil enforcement action brought by the
9 state or federal regulatory authorities. Subpoenas shall first be
10 directed to the commissioner, who shall authorize disclosure of
11 relevant records and information from the records for good cause,
12 upon imposing terms and conditions considered necessary to protect
13 the confidential nature of the records, the financial integrity of
14 the financial institution or the person to which the records relate
15 and the legitimate privacy interests of any individual named in the
16 records. Conformity with federal procedures shall be sought where
17 the institution maintains federal deposit insurance. The
18 commissioner has and may exercise reasonable discretion as to the
19 time, manner and extent the other records in his or her office and
20 the information contained in the records are available for public
21 examination;

22 (2) Require all financial institutions to comply with all the
23 provisions of this chapter and other applicable laws, or any rule

1 promulgated or order issued thereunder;

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

5 (4) Require a criminal background investigation, including
6 requiring fingerprints for submission to the Federal Bureau of
7 Investigation or any governmental agency or entity authorized to
8 receive such information for a state, national or international
9 criminal history check, of each: (A) Applicant seeking approval to
10 charter and/or control a state bank, state credit union or a
11 foreign bank state agency or representative office; (B) applicant
12 seeking a license to engage in the business of money transmission,
13 currency exchange or other activity regulated under article two,
14 chapter thirty-two-a of this code; (C) applicant subject to the
15 commissioner's supervision seeking a license to engage in the
16 business of regulated consumer lending, mortgage lending or
17 brokering; and (D) Division of Banking Financial Institutions
18 regulatory employee applicant: *Provided*, That where the applicant
19 is a company or entity already subject to supervision and
20 regulation by the Federal Reserve Board or other federal bank,
21 thrift or credit union regulator, or is a direct or indirect
22 subsidiary of a company or entity subject to the supervision and
23 regulation, or where the applicant is a company subject to the

1 supervision and regulation of the federal Securities and Exchange
2 Commission whose stock is publicly traded on a registered exchange
3 or through the National Association of Securities Dealers automated
4 quotation system, or the applicant is a direct or indirect
5 subsidiary of such a company, the investigation into criminal
6 background is not required. The provisions of this subdivision are
7 not applicable to applicants seeking interim bank charters
8 organized solely for the purpose of facilitating the acquisition of
9 another bank pursuant to section five, article four of this
10 chapter: *Provided, however,* That where a nonexempt applicant under
11 this subdivision is not a natural person, the principals of the
12 applicant are subject to the requirements of this subdivision. As
13 used in this subdivision, the term "principals" means the chief
14 executive officer, regardless of title, managing partner if a
15 partnership, members of the organizing group if no chief executive
16 officer has yet been appointed, trustee or other person controlling
17 the conduct of the affairs of a licensee. A person controlling ten
18 percent or more of the stock of any corporate applicant shall be
19 considered to be a principal under this provision. The
20 commissioner may establish relationships or contracts with the
21 Nationwide Mortgage Licensing System and Registry or other entities
22 designated by the Nationwide Mortgage Licensing System and Registry
23 to collect and maintain records related to criminal background

1 investigations and fingerprints of persons subject to this
2 subsection.

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

9 (B) To reduce the points of contact which the commissioner may
10 have to maintain, the commissioner may use the Nationwide Mortgage
11 Licensing System and Registry as a channeling agent for requesting
12 and distributing information to and from any source so directed by
13 the commissioner.

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

17 (1) Provide for the organization of the division and the
18 procedures and practices of the division and implement the
19 procedures and practices by the promulgation of rules and forms as
20 appropriate and the rules shall be promulgated in accordance with
21 article three, chapter twenty-nine-a of this code;

22 (2) Employ, direct, discipline, discharge and establish
23 qualifications and duties for all personnel for the division,

1 including, but not limited to, examiners, assistant examiners,
2 conservators and receivers, establish the amount and condition of
3 bonds for the personnel he or she considers appropriate and pay the
4 premiums on the bonds and, if he or she elects, have all personnel
5 subject to and under the classified service of the state personnel
6 division;

7 (3) Cooperate with organizations, agencies, committees and
8 other representatives of financial institutions of the state in
9 connection with schools, seminars, conferences and other meetings
10 to improve the responsibilities, services and stability of the
11 financial institutions;

12 (4) In addition to the examinations required by section six of
13 this article, inspect, examine and audit the books, records,
14 accounts and papers of all financial institutions and any third-
15 party vendor providing information technology services to financial
16 institutions at such times as circumstances in his or her opinion
17 may warrant;

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

23 (6) Subject to the powers vested in the board by article three

1 of this chapter, supervise the location, organization, practices
2 and procedures of financial institutions and, without limitation on
3 the general powers of supervision of financial institutions,
4 require financial institutions to:

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

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

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

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

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

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

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

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

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

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

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

6 (7) Subject to the powers vested in the board by article three
7 of this chapter, receive from any person or persons and consider
8 any request, petition or application relating to the organization,
9 location, conduct, services, policies and procedures of any
10 financial institution and to act on the request, petition or
11 application in accordance with any provisions of law applicable
12 thereto;

13 (8) In connection with the investigations required by
14 subdivision (3), subsection (b) of this section, issue subpoenas
15 and subpoenas duces tecum, administer oaths, examine persons under
16 oath, and hold and conduct hearings. Any subpoenas or subpoenas
17 duces tecum shall be issued, served and enforced in the manner
18 provided in section one, article five, chapter twenty-nine-a of
19 this code. Any person appearing and testifying at a hearing may be
20 accompanied by an attorney employed by him or her;

21 (9) Issue declaratory rulings in accordance with the
22 provisions of section one, article four, chapter twenty-nine-a of
23 this code;

1 (10) Study and survey the location, size and services of
2 financial institutions, the geographic, industrial, economic and
3 population factors affecting the agricultural, commercial and
4 social life of the state and the needs for reducing, expanding or
5 otherwise modifying the services and facilities of financial
6 institutions in the various parts of the state and compile and keep
7 current data thereon to aid and guide him or her in the
8 administration of the duties of his or her office;

9 (11) Implement all of the provisions of this chapter, except
10 the provisions of article three of this chapter, and all other laws
11 which he or she is empowered to administer and enforce by the
12 promulgation of rules in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code;

14 (12) Implement the provisions of chapter forty-six-a of this
15 code applicable to consumer loans and consumer credit sales by the
16 promulgation of rules in accordance with the provisions of article
17 three, chapter twenty-nine-a of this code as long as the rules do
18 not conflict with any rules promulgated by the state's Attorney
19 General;

20 (13) Foster and encourage a working relationship between the
21 Division of Banking and financial institutions, credit, consumer,
22 mercantile and other commercial and finance groups and interests in
23 the state in order to make current appraisals of the quality,

1 stability and availability of the services and facilities of
2 financial institutions;

3 (14) Provide to financial institutions and the public copies
4 of the West Virginia statutes relating to financial institutions,
5 suggested drafts of bylaws commonly used by financial institutions
6 and any other forms and printed materials found by him or her to be
7 helpful to financial institutions, their shareholders, depositors
8 and patrons and make reasonable charges for the copies;

9 (15) Delegate the powers and duties of his or her office,
10 other than the powers and duties excepted in this subdivision, to
11 qualified division personnel who shall act under the direction and
12 supervision of the commissioner and for whose acts he or she is
13 responsible, but the commissioner may delegate to the deputy
14 commissioner of banking and to no other division personnel the
15 following powers, duties and responsibilities, all of which are
16 hereby granted to and vested in the commissioner and for all of
17 which the commissioner also is responsible. The commissioner shall:

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

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

1 (C) Revoke the certificate of authority, permit or license of
2 any financial institution except a banking institution in
3 accordance with the provisions of section thirteen of this article;
4 and

5 (D) Accept an assurance in writing that the person will not in
6 the future engage in the conduct alleged by the commissioner to be
7 unlawful, which could be subject to an order under the provisions
8 of this chapter. This assurance of voluntary compliance shall not
9 be considered an admission of violation for any purpose, except
10 that if a person giving the assurance fails to comply with its
11 terms, the assurance is prima facie evidence that prior to this
12 assurance the person engaged in conduct described in the assurance;

13 (16) Seek and obtain civil administrative penalties against
14 any person who violates this chapter, the rules issued pursuant to
15 this chapter, or any orders lawfully entered by the commissioner or
16 board of banking and financial institutions in an amount not more
17 than \$5,000 per day for each violation: *Provided*, That all of the
18 pertinent provisions of article five, chapter twenty-nine-a of this
19 code shall apply to any assessment of a penalty under this
20 subsection;

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

1 (18) Expend funds in order to promote consumer awareness and
2 understanding of issues related to residential mortgage lending.
3 In furtherance of this duty, there is established in the State
4 Treasury a special revenue account to be known as the Consumer
5 Education Fund, which shall be administered by the Commissioner of
6 Banking. Ten percent of all civil administrative penalties
7 collected by the Division of Banking during each fiscal year shall
8 be deposited into the fund and may be expended by the commissioner
9 to promote consumer awareness and understanding of issues related
10 to residential mortgage lending. The account shall be a special
11 revenue account, and may be invested and retain all earnings and
12 interest. Any remaining balance less than \$500,000, including
13 accrued interest, in the fund at the end of the fiscal year shall
14 not revert to the General Revenue Fund, but shall remain in the
15 account. Any balance which exceeds \$500,000 as of June 30, 2012,
16 and each year thereafter, shall revert to the General Revenue Fund;
17 and

18 (19) Take other action as he or she may consider necessary to
19 enforce and administer the provisions of this chapter, except the
20 provisions of article three of this chapter, and all other laws
21 which he or she is empowered to administer and enforce and apply to
22 any court of competent jurisdiction for appropriate orders, writs,
23 processes and remedies.

(NOTE: The purpose of this bill is to amend current law which limits the commissioner's ability to collect information pertaining to criminal background checks and fingerprinting for officers and principals of financial institutions to the West Virginia State Police and the Federal Bureau of Investigation, to allow the commissioner to also utilize the Nationwide Mortgage Licensing System as a channeling agent for requesting and distributing such information. It also provides that the Commissioner of Banking's authority to conduct examinations of financial institutions extends to third-party vendors that provide information technology services to those financial institutions. It also creates a special revenue fund to be administered by the Commissioner of Banking consisting of ten percent of all civil administrative penalties collected by the Division of Banking from regulated financial institutions during each fiscal year for use in the promotion of consumer awareness and understanding of issues related to residential mortgage lending.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)