

## WEST VIRGINIA CODE: §31A-2-4

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

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

(b) The commissioner shall:

(1) Maintain an office for the division and there keep a complete record of all the division's transactions, of the financial conditions of all financial institutions, and records of the activities of other persons as the commissioner considers important. Notwithstanding any other provision of this code, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained in the records shall be confidential for the use of the commissioner and authorized personnel of the Division of Financial Institutions. No person shall divulge any information contained in any records except as authorized in this subdivision in response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information from the records for good cause, upon imposing terms and conditions considered necessary to protect the confidential nature of the records, the financial integrity of the financial institution, or the person to which the records relate, and the legitimate privacy interests of any individual named in the records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner has and may exercise reasonable discretion as to the time, manner, and extent the other records in his or her office and the information contained in the records are available for public examination;

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

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

(4) Require a criminal background investigation, including requiring fingerprints for

submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national, or international criminal history check, of each:

- (A) Applicant seeking approval to charter and/or control a state bank, state credit union, or a foreign bank state agency or representative office;
  - (B) Applicant seeking a license to engage in the business of money transmission, currency exchange, or other activity regulated under §32A-2-1 et seq. of this code;
  - (C) Applicant subject to the commissioner's supervision seeking a license to engage in the business of regulated consumer lending, mortgage lending, or brokering; and
  - (D) Division of Financial Institutions regulatory employee applicants.
- (E) The provisions of this subdivision are not applicable where the applicant is a company or entity already subject to supervision and regulation by the Federal Reserve Board or other federal bank, thrift, or credit union regulator, or is a direct or indirect subsidiary of a company or entity subject to the supervision and regulation, or where the applicant is a company subject to the supervision and regulation of the federal Securities and Exchange Commission whose stock is publicly traded on a registered exchange or through the National Association of Securities Dealers automated quotation system, or the applicant is a direct or indirect subsidiary of such a company, the investigation into criminal background is not required. The provisions of this subdivision are not applicable to applicants seeking interim bank charters organized solely for the purpose of facilitating the acquisition of another bank pursuant to §31A-4-5 of this code. The requirements of this subdivision are applicable to the principals of the applicant where a nonexempt applicant under this subdivision is not a natural person. As used in this subdivision, the term "principals" means the chief executive officer, regardless of title, managing partner if a partnership, members of the organizing group if no chief executive officer has yet been appointed, trustee, or other person controlling the conduct of the affairs of a licensee. A person controlling 10 percent or more of the stock of any corporate applicant shall be considered to be a principal under this provision. Notwithstanding any other provision of this code to the contrary, the commissioner may determine alternate acceptable forms for background check information for direct or indirect principals of a licensee or applicant for a mortgage lender or broker license or a money transmission license who are not residents of the United States if such licensee or applicant also has owners or principals who are residents of the United States and the division has been provided adequate background information, as provided in this subdivision, for such owners or principals of the licensee or applicant who are United States residents. The commissioner may establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records related to criminal background investigations and fingerprints of persons subject to this subsection.

To reduce the points of contact which the Federal Bureau of Investigation may have to

maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

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

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

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

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

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

(4) In addition to the examinations required by §31A-2-6 of this code, inspect, examine, and audit the books, records, accounts, and papers of all financial institutions and any third-party vendor providing information technology services to financial institutions at such times as circumstances in his or her opinion may warrant;

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

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

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

- (B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;
- (C) Charge off the whole or any part of an asset which at the time of his or her action could not lawfully be acquired;
- (D) Write down an asset to its market value;
- (E) Record or file writings creating or evidencing liens or other interests in property;
- (F) Obtain financial statements from prospective and existing borrowers;
- (G) Obtain insurance against damage and loss to real estate and personal property taken as security;
- (H) Maintain adequate insurance against other risks as he or she may determine to be necessary and appropriate for the protection of depositors and the public;
- (I) Maintain an adequate fidelity bond or bonds on its officers and employees;
- (J) Take other action that in his or her judgment is required of the institution in order to maintain its stability, integrity, and security as required by law and all rules promulgated by him or her; and
- (K) Verify any or all asset or liability accounts;
- (7) Subject to the powers vested in the board by §31A-3-1 et seq. of this code, receive from any person or persons and consider any request, petition, or application relating to the organization, location, conduct, services, policies, and procedures of any financial institution and to act on the request, petition, or application in accordance with any provisions of law applicable thereto;
- (8) In connection with the investigations required by §31A-2-4(b)(3) of this code, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served, and enforced in the manner provided in §29A-5-1 of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;
- (9) Issue declaratory rulings in accordance with the provisions of §29A-4-1 of this code;
- (10) Study and survey the location, size, and services of financial institutions, the geographic, industrial, economic, and population factors affecting the agricultural, commercial, and social life of the state, and the needs for reducing, expanding, or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

- (11) Implement all of the provisions of this chapter, except the provisions of §31A-3-1 et seq. of this code, and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of §29A-3-1 et seq. of this code;
- (12) Implement the provisions of chapter 46A of this code applicable to consumer loans and consumer credit sales by the promulgation of rules in accordance with the provisions of §29A-3-1 et seq. of this code as long as the rules do not conflict with any rules promulgated by the state's Attorney General;
- (13) Foster and encourage a working relationship between the Division of Financial Institutions and financial institutions, credit, consumer, mercantile, and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability, and availability of the services and facilities of financial institutions;
- (14) Provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions, and any other forms and printed materials found by him or her to be helpful to financial institutions, their shareholders, depositors, and patrons and make reasonable charges for the copies;
- (15) Delegate the powers and duties of his or her office, other than the powers and duties excepted in this subdivision, to qualified division personnel who shall act under the direction and supervision of the commissioner and for whose acts he or she is responsible, but the commissioner may delegate to the deputy commissioner of financial institutions and to no other division personnel the following powers, duties, and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner also is responsible. The commissioner shall:
- (A) Order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;
- (B) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;
- (C) Revoke the certificate of authority, permit, or license of any financial institution except a banking institution in accordance with the provisions of §31A-2-13 of this code; and
- (D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is *prima facie* evidence that prior to this assurance the person engaged in conduct described in the assurance;
- (16) Seek and obtain civil administrative penalties against any person who violates this

chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the commissioner or Board of Banking and Financial Institutions in an amount not more than \$5,000 per day for each violation: Provided, That all of the pertinent provisions of §29A-5-1 et seq. of this code shall apply to any assessment of a penalty under this subsection;

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

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

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