WEST VIRGINIA CODE CHAPTER 31A ARTICLE 2

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§31A-2-1. Department of Banking of West Virginia, offices of Commissioner and Deputy Commissioner of Banking continued.

The Department of Banking of West Virginia, the Office of Commissioner of Banking of West Virginia and the Office of Deputy Commissioner of Banking of West Virginia, heretofore created and existing in the state government, are continued and, after the date of the passage of the amendments to this section adopted in the regular Legislative Session of 2012, shall hereafter be referred to, respectively, as the Division of Financial Institutions, the Commissioner of Financial Institutions and the Deputy Commissioner of Financial Institutions.

All references in this code to the Department of Banking or the Division of Banking shall, after the effective date of the amendments to this section adopted in the regular Legislative Session of 2012, be read, construed and understood to mean and to have reference to the Division of Financial Institutions. All references in this code to the Commissioner of Banking and the Deputy Commissioner of Banking shall, after the effective date of the amendments to this section adopted in the regular Legislative Session of 2012, be read, construed and understood to mean and have reference, respectively, to the Commissioner of Financial Institutions and the Deputy Commissioner of Financial Institutions.

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§31A-2-2. Commissioner's appointment, term, qualifications, salary, oath and bond.

The commissioner of banking shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall serve at the will and pleasure of the Governor for the term for which the Governor was elected and until his successor is appointed and qualified, unless earlier removed from office for cause as provided by law.

Any person appointed as commissioner shall have a college degree from an accredited institution, be of good moral character, have knowledge of the theory and practice of banking and be at least twenty-five years of age.

Before entering upon the discharge of his duties as commissioner, he shall take and subscribe to the oath of office prescribed in section five, article four of the Constitution of West Virginia and shall enter into a bond in the penal sum of $100,000, with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of his office. The premium of such bond shall be payable from the State Treasury out of funds allocated to the department of banking. The executed oath and bond shall be filed in the office of the Secretary of State.

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§31A-2-3. Deputy commissioner's appointment, tenure, salary, qualifications, oath and bond; exercise of commissioner's powers by deputy.

The deputy commissioner of banking shall be appointed by and be under the supervision and direction of the commissioner of banking. The deputy commissioner's tenure in office shall be at the will and pleasure of the commissioner. The deputy commissioner's salary shall be fixed annually by the commissioner and shall be payable in installments as provided by law.

Any person appointed as deputy commissioner shall have had at least three years' experience as an active executive officer of a bank in this state or a minimum of three years' experience in a bank examining or supervisory capacity for this state, for other states, or for the federal government, or a combination thereof, or a minimum of four years' combined experience as such active bank executive officer and in such examining or supervisory capacity.

Before entering upon the discharge of the duties of his office, the deputy commissioner shall comply with the same oath and bond requirements prescribed for the commissioner in section two of this article.

In the event of a vacancy in the office of commissioner or in the event of the disability or absence from the state of the commissioner, the deputy commissioner shall have and may exercise all of the authority and powers of the commissioner and shall be responsible for the performance of all duties, functions and services of the commissioner.

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§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.

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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

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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;

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(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;

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(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.

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§31A-2-4a. Orders of the commissioner of banking to be made public.

Any order entered by the commissioner of banking against any person:

(1) To cease violating any provision or provisions of this chapter or other applicable law or rule and regulation promulgated or order issued thereunder;

(2) To cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution;

(3) To revoke the certificate of authority, permit or license of any financial institution; and

(4) To take such other action as the commissioner of banking may deem necessary to enforce and administer the provisions of this chapter and all other laws which the commissioner is empowered to enforce is a matter of public record.

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§31A-2-4b. Provision of legal services.

(a) The commissioner of banking has plenary power and authority to acquire those legal services the commissioner deems necessary to carry out the functions and duties of the Division of Banking or the office of commissioner of banking, including, but not limited to, representation of the division or the commissioner in any administrative or judicial proceeding.

(b) The commissioner may acquire legal services from attorneys licensed to practice law who are employed by the commissioner on a salary basis or retained by the commissioner on a reasonable fee basis.

(c) The commissioner may also request the assistance of the Attorney General and be represented in an administrative or judicial proceeding by a deputy or assistant Attorney General acceptable to the commissioner.

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§31A-2-4c. County Clerk to file reports of trustees regarding sales of residential real property pursuant to deeds of trust and forward to the banking commissioner; transfer of powers and duties relating to reports of trustees to the West Virginia Housing Development Fund.

(a) In addition to the jurisdiction, powers, and duties set out in section four of this article, the banking commissioner is vested with the jurisdiction, powers and duties to receive and compile the data into an electronic database and make available the raw data that is required to be reported by trustees to county clerks pursuant to section eight-a, article one, chapter thirty-eight of the Code of West Virginia. The commissioner has the power to promulgate rules in accordance with this section and the provisions of article three, chapter twenty-nine-a of this code in order to carry out the requirements of this section. The commissioner is authorized to expend funds for this purpose.

(b) On and after July 1, 2010, the jurisdiction, powers and duties vested in the banking commissioner in subsection (a) of this section are hereby transferred and imposed upon the West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code and all data that has been received and compiled by the banking commissioner pursuant to subsection (a) of this section shall be transferred to the West Virginia Housing Development Fund.

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§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

(a) No person shall engage or continue in the business of a financial institution in this state without a license or certificate to do so issued in accordance with this section, or other applicable law, which license or certificate remains unsuspended, unexpired and unrevoked except that a corporation which proposes to apply for such license or certificate may secure its charter, adopt bylaws, elect its directors and officers and perfect its organization.

(b) No person shall operate an office in West Virginia which regularly makes consumer loans in this state other than first mortgage loans unless they are a financial institution, licensed pawnbroker or a federally insured depository institution authorized and qualified to do business in this state. The purchase of consumer paper does not constitute the making of consumer loans for the purposes of this subsection, unless the purchase is made by a business affiliated with the credit provider pursuant to a standing arrangement.

(c) Application for such license or certificate shall be upon such forms and contain such information as the Commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(d) If the application be that of a West Virginia state banking institution, the Commissioner of Banking shall examine the information, documents and statements submitted and, if he or she finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he or she shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the Commissioner of Banking shall examine the information, documents and statements submitted and, if he or she finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he or she shall issue to it a certificate or license permitting it to engage in business. Such certificate or license shall be preserved and the original or copy thereof displayed in all the places of business of such banking or other financial institution located in this state.

(e) In addition to the requirements of subsections (b) and (c) of this section, every foreign corporation applying for a license or certificate to engage in the business of a financial institution in this state, other than an out-of-state banking institution, shall file with the Commissioner of Banking a copy of the bylaws under which it operates, together with a cite

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to the statutes of the jurisdiction where it is organized which pertain to its organization and powers and the conduct of its business. The commissioner shall examine the information, documents and statements submitted by such foreign corporation and if he or she finds that they provide practical, safe, just and equitable rules and methods for the management of the business of the corporation, that it has adequate resources for the proposed business and it has complied in all respects with the provisions of this chapter and other applicable laws and that the public convenience and advantage will be promoted by the issuance of a license or certificate thereto, he or she shall issue to such corporation a certificate or license permitting it to engage in business in this state, which certificate or license shall authorize such corporation to engage in the business of the type of financial institution specified therein, until the thirtieth day of the following June. Thereafter a new certificate or license shall be secured annually by any such foreign corporation, except where annual renewal of the license or certificate is specifically not required for the type of institution involved. The fee for the original and each additional license or certificate issued to a foreign corporation shall be $100, unless otherwise provided by statute. A verified statement of the financial condition of every such foreign corporation shall be filed with the Commissioner before the issuance of each annual certificate or license. Such certificate or license shall be preserved and the original or copy thereof displayed in the West Virginia place of business of such corporation.

(f) Unless the institution is a federally insured depository institution or it is otherwise provided for by statute, a new certificate or license shall be secured annually by all domestic state financial institutions and the fee for the original and each additional license or certificate shall be $100.

(g) No amendment of the charter or bylaws of any domestic or foreign corporation, other than an out-of-state banking institution, engaging in business in this state as a financial institution shall become effective until the proposed change shall have been submitted to and approved by the Commissioner of Banking; but, if the Commissioner does not disapprove such proposed change within twenty days after it is received by him or her, it shall be deemed to have been approved.

(h) Unless specifically provided for by this chapter, nothing contained in this code shall authorize any person to engage in the banking business in this state except corporations chartered to conduct a banking business under the laws of West Virginia and which hold a license or certificate to do so issued under this section, limited liability companies organized to conduct a banking business under the laws of West Virginia and which hold a license or certificate to do so under this section or associations authorized to conduct a banking business in West Virginia under the laws of the United States and having their principal place of business in this state.

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§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal or out-of-state agency in lieu of commissioner's examination.

(a) The commissioner shall make a thorough examination of all the books, accounts, records and papers of every depository financial institution using the same frequency of examination schedule as the financial institution's primary federal regulator. He or she shall carefully examine all of the assets of each institution, including its notes, drafts, checks, mortgages, securities deposited to assure the payment of debts unto it and all papers, documents and records showing, or in any manner relating to, its business affairs and shall ascertain the full amount and the nature in detail of all of its assets and liabilities. The commissioner may also, at his or her discretion, make or cause to be made an annual or periodic examination of the books, accounts, records and papers of other financial institutions under his or her supervision for the purposes of determining compliance with applicable consumer and credit lending laws and verifying information provided in any license application or annual report submitted to the commissioner. The commissioner may also make an examination of any subsidiaries or affiliates of a financial institution as he or she may consider necessary to ascertain the financial condition of the financial institution, the relations between the financial institution and its subsidiaries and affiliates and the effect of the relations upon the affairs of the financial institution. A full report of every examination shall be made and filed and preserved in the office of the commissioner and a copy of it immediately mailed to the institution examined. Every institution shall retain all of its records of final entry for the period of time as required in section thirty-five, article four of this chapter for banking institutions. Unless otherwise covered by assessments or a specific provision of this code, the cost of examinations made pursuant to this section shall be borne by the financial institution at a rate of $50 per each examiner hour expended.

(b) Every official communication from the commissioner to any institution, or to any officer thereof, relating to an examination or an investigation of the affairs of the institution conducted by the commissioner or containing suggestions or recommendations as to the manner of conducting the business of the institution, shall be read by the board of directors at the next meeting after its receipt and the president, or other executive officer, of the institution shall immediately notify the commissioner in writing of the presentation and reading of the communication and of any action taken on it by the institution.

(c) The Commissioner of Banking, in his or her discretion, may: (i) Accept a copy of a reasonably current examination of any banking institution made by the Federal Deposit Insurance Corporation or the Federal Reserve System in lieu of an examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to the Federal Deposit Insurance Corporation or the Federal Reserve System or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on the banking institutions; (ii) accept a copy of a reasonably current examination of any out-of-state bank or any West Virginia state bank's out-of-state activities made by another state's banking regulatory authority in lieu of an

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examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to the other state's banking regulatory authority or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on the banking institutions; but nothing in this subsection shall be construed to limit the duty and responsibility of banking institutions to comply with all provisions of law relating to examinations and reports, nor to limit the powers and authority of the commissioner of banking with reference to examinations and reports under existing laws. The provision or exchange of examination reports and other records of financial condition and individuals pursuant to cooperative, coordinating or information-sharing agreements with other bank supervisory agencies and persons as permitted by this chapter under an agreement of confidentiality shall not constitute a violation of section four of this article.

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§31A-2-7. Duties of officers, employees, etc., of financial institution in connection with examination; examination under oath; offenses and penalties.

All officers, directors, employees and other persons connected with any financial institution, upon request of the commissioner of banking, or his or her duly authorized representative, shall furnish and give full access to all of the books, papers, notes, bills and other evidences of debts due to the institution; produce and furnish all documents, records, writings and papers relating to the business of the institution which the commissioner is authorized to examine; disclose fully, accurately and in detail all of the debts and liabilities of the institution; and furnish the clerical aid and assistance as may be required in the performance of the commissioner's duties as provided by law. The commissioner or his or her representative, as the case may be, shall have the right and authority to administer oaths and to examine under oath each officer, director, employee or other person connected with the institution concerning any matter and thing pertaining to the business and condition of the institution.

Any officer, director, employee or other person connected with any such institution who willfully fails or refuses to so furnish the documents, papers, materials or information as herein required or who willfully fails to discharge any other duty or obligation as herein provided shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to the penalties provided in section fifteen, article eight of this chapter.

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§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the "commissioner's assessment and examination fund" which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the Division of Banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the Division of Banking, the amount of the excess shall be transferred to the General Revenue Fund of the state. The Legislature may appropriate money to start the special revenue account.

(b) the Commissioner of Banking shall charge and collect from each state banking institution or other financial institution or bank holding company and pay into a special revenue account in the State Treasury for the Division of Banking assessments as follows: (1) For each state banking institution, a quarterly assessment payable on January 1, April 1, July 1, and October 1 each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of the preceding June 30, September 30, December 31 and March 31, respectively, as follows:

Total Assets

But Not Of Excess

Over Over This Over

Million Million Amount Plus Million

$ 0 $ 2 $ 0 .001645020 0

2 20 3,290 .000205628 2

20 100 6,991 .00016450 220

100 200 20,151 .000106926 100

200 1,000 30,844 .000090476 200

1,000 2,000 103,225 .000074026 1,000

2,000 6,000 177,251 .000065801 2,000

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6,000 20,000 440,454 .000055988 6,000

20,000 40,000 1,224,292 .000052670 20,000

(2) For each regulated consumer lender, an annual assessment payable on July 1, each year, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest of the regulated consumer lender shown on the report of condition of the regulated consumer lender as of the preceding thirty-first day of December, respectively, as follows:

Total Outstanding Balances

But Not This Of Excess

Over Over Amount Plus Over

$ 0 $ 1,000,000 800 - -

1,000,000 5,000,000 800 .000400 1,000,000

5,000,000 10,000,000 2,400 .000200 5,000,000

10,000,000 - 4,200 .000100 10,000,000

If a regulated consumer lender's records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

In addition to the assessment provided in this subdivision, the commissioner shall charge and collect from each regulated consumer lender the actual and necessary costs and expenses incurred in connection with any examination of a regulated consumer lender.

(3) For each credit union, an annual assessment as provided for in section eight, article one, chapter thirty-one-c of this code as follows:

Total Assets

But Not This Of Excess

Over Over Amount Plus Over

$ 0 $ 100,000 100 - -

100,000 500,000 300 - -

500,000 1,000,000 500 - -

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1,000,000 5,000,000 500 .000400 1,000,000

5,000,000 10,000,000 2,100 .000200 5,000,000

10,000,000 - 3,100 .000100 10,000,000

(4) For each bank holding company, an annual assessment as provided for in section eight, article eight-a of this chapter. The annual assessment may not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(c) The commissioner shall each December March, June and September prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall further, each June, prepare and send to each regulated consumer lender and each state credit union a statement of the amount of the assessment due. The commissioner shall annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

State banking institution assessments may be prescribed every three months, not later than June 15 September 15, December 15 and March 15 by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the Division of Banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act under chapter twenty-nine-a of this code.

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the Division of Banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner. Banks that provide only trust or other nondepository services, nonbanking subsidiaries of bank holding companies that provide trust services, nonbanking subsidiaries of banks that provide trust services and any trust entity that is jointly owned by federally insured depository institutions may be assessed for necessary costs and expenses associated with an examination pursuant to this subsection.

(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

(f) The Commissioner of Banking may maintain an action for the recovery of all assessments,

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costs and expenses in any court of competent jurisdiction.

WV Legislature

§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition of doubtful assets and past-due obligations; stockholders' meetings.

Whenever it appears that any law, rule and regulation or order applicable to any financial institution is being violated, or that any irregularities exist or unsound practices or procedures are being engaged in, it shall be the duty of the commissioner of banking to promptly call the same to the attention of the officers and directors of the financial institution offending and to demand that the same be promptly corrected; and he or she may require a sworn statement from the said officers and directors covering the matter of all such violations and of all such irregularities, unsound practices or procedures to be furnished to him or her as often as he or she may deem necessary, until he or she is satisfied that such violations have ceased and that the irregularities, unsound practices or procedures complained of have been corrected. Such reports shall not be made public, except as necessary as part of any order or other enforcement action or proceeding.

If any such institution owns any asset, the value of which, in the judgment of the commissioner of banking, is questionable, or owns past-due obligations, the commissioner of banking may require the assets of doubtful value to be at once converted into money or charged off of the books of the financial institution at the expiration of three months from the date of such order; or require legal proceedings to be at once instituted for the collection of any past-due obligations to the financial institution or that they be charged off.

Upon the written notice of the commissioner of banking, the directors of any financial institution shall call a general meeting of the stockholders thereof to consider such matters as the commissioner may prescribe. Notice of such meeting shall be given in accordance with applicable statutes and the bylaws of the financial institution. The expense of such meeting and notice thereof shall be borne by the financial institution whose stockholders are so required to convene.

WV Legislature

§31A-2-10.

Repealed.

Acts, 1997 Reg. Sess., Ch. 96.

WV Legislature

§31A-2-11.

Repealed.

Acts, 2005 Reg. Sess., Ch. 31.

WV Legislature

§31A-2-12. Commissioner's annual report; contents; affidavit.

Annually on or before December 1, the commissioner of banking shall prepare and submit to the Governor a careful and complete report, detailing the work, services and functions performed by him during the preceding fiscal year. The report shall show the total resources and liabilities of all financial institutions, the increase or decrease for the year in the aggregate of such resources and liabilities, carefully noting any failures that may have occurred, stating the causes thereof, and making such remarks, suggestions and recommendations as he may deem pertinent, including recommendations on policy, administration and legislation pertaining to all financial institutions.

Such report shall be verified by the affidavit of said commissioner, who shall swear that, in making the examination of each financial institution he or a qualified person in his department appointed by him has personally and carefully inspected the books, papers and affairs of the institution, or in the case of any banking institution, that he has accepted a reasonably current examination made by the federal deposit insurance corporation or the federal reserve system in lieu of conducting such an examination, and that he has not, and, so far as he knows or is informed, no person in his department has, in any case received or agreed to receive directly or indirectly any reward, gift, or promise thereof, from any officer or other person connected with any financial institution.

WV Legislature

§31A-2-12a. Establishment of deposit acquisition limitation.

After a review of the structure of depository institutions in the State of West Virginia, the Legislature hereby determines that:

(a) It is in the best interest of this state and its citizens to foster and encourage healthy competition among its domestic depository institutions;

(b) Obtaining excessive concentration or control of the deposit resources of this state by merger or acquisition is antithetical to fostering a competitive environment; and

(c) Therefore, an acquisition or merger shall not be permitted under this chapter or otherwise if upon consummation of the transaction, the resulting depository institution or its holding company, including any depository institution(s) affiliated therewith, would assume sufficient additional deposits to cause it to control deposits in this state in excess of the following acquisition deposit limitation amount: Twenty percent of the total amount of all deposits held by insured depository institutions, which permissible amount shall increase to twenty-five percent of such total deposits on May 31, 1997.

(d) The term "depository institutions", as used in this section, shall include, but is not limited to, state-chartered banking institutions, national banking associations, federal savings and loan associations, bank holding companies, savings and loan holding companies, federal savings banks, state-chartered credit unions and federally-chartered credit unions.

(e) Any merger or acquisition contrary to this provision is unlawful: Provided, That the commissioner may by rule adopt a procedure whereby said acquisition deposit limitation as set forth herein may be waived for good cause shown.

WV Legislature

§31A-2-13. Enforcement of orders of the commissioner against financial institutions.

(a) If any financial institution shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (15), subsection (c), section four of this article, the commissioner may apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order; or may apply to the board of banking and financial institutions for appropriate relief.

(b) In addition, if any financial institution other than a state bank shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (15), subsection (c), section four of this article, the commissioner may make and enter an order revoking the certificate of authority, permit or license of such institution to engage in the business of a financial institution in this state.

WV Legislature

§31A-2-14. Banking interests of and acceptance of gratuities by officers and employees of department.

No officer or employee of the department of banking shall be an officer, director, trustee, attorney, owner, shareholder, or partner in or of any financial institution. Nor shall any officer or employee of the department receive, directly or indirectly, any payment or gratuity from any financial institution, or be engaged in any manner in the negotiation of loans for others therewith. Nothing herein shall prohibit said persons from having shares as a result of membership in a credit union, mutual savings association, or similar depository institution by virtue of being a customer; nor shall it prohibit the receipt of interest or other payments on accounts made in the regular course of business.

WV Legislature

§31A-2-15.

Repealed.

Acts, 1997 Reg. Sess., Ch. 96.

WV Legislature

§31A-2-16. Effective date.

The amendments to this article enacted during the first extraordinary session of the Legislature in the year 1996 shall be effective as of June 7, 1996.

WV Legislature