WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED

HOUSE BILL No. 1359

(By Mr. 

Passed 

In Effect 

Passed February 25, 1983

Ninety Days From Passage
AN ACT to amend and reenact section thirteen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article ten of said chapter thirty-one; to amend and reenact section eight, article two, chapter thirty-one-a of said code; to amend and reenact section five, article four of said chapter thirty-one-a; to amend and reenact section five, article eight-a of said chapter thirty-one-a; and to amend and reenact section one hundred five, article four, chapter forty-six-a of said code, all relating to financial institutions; department of banking; banks and banking; state banking institutions and services generally; bank holding companies; industrial banks and industrial loan companies; credit unions; supervised lenders; creating a special revenue account for the deposit of assessments, fees and expenses; authorizing the commissioner to assess certain financial institutions and bank holding companies; providing the commissioner with the authority to establish the assessments not to exceed certain maximums; and increasing certain fees.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section six, article ten of said chapter thirty-one be amended and reenacted; that section eight, article two, chapter thirty-one-a of said code be amended and reenacted; that section five, article four of said chapter thirty-one-a be amended and
reenacted; that section five, article eight-a of said chapter thirty-one-a be amended and reenacted; and that section one hundred five, article four, chapter forty-six-a of said code be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-13. Supervision and control.

(a) Every industrial loan company shall be subject to the inspection, examination, supervision, jurisdiction and control of the commissioner and the board in the same manner and to the same extent as is the case of banking institutions organized under the laws of this state under the provisions of chapter thirty-one-a of this code insofar as the same are applicable thereto. Where forty percent or more of the common stock of any industrial loan company is owned or is held in trust for the benefit of or by any other single firm, corporation, partnership or association, such other firm, corporation, partnership or association shall also be subject to the same jurisdiction and powers of inspection, examination, supervision and control of the commissioner and of the board in the same manner and to the same extent as if such other firm, corporation, partnership or association were an industrial loan company.

(b) The commissioner of banking shall charge and collect from each industrial loan company and pay into a special revenue account for the department of banking an annual assessment payable on the first day of July, computed upon the total assets of the industrial loan company shown on the report of condition of the industrial loan company as of the last business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code.

(c) Every industrial bank shall be subject to the inspection, examination, assessment, supervision, jurisdiction and control of the commissioner and of the board in the manner provided in chapter thirty-one-a of this code and to the same extent as is the case of other banking institutions organized under the laws of this state and in addition, shall be subject to all of the
provisions, regulations and requirements of the federal deposit
insurance corporation including the right of inspection, exami-
nation, supervision and control as may be required by the
federal deposit insurance corporation.

ARTICLE 10. CREDIT UNIONS.

§31-10-6. Supervision by and reports to commissioner of banking;
examinations; assessment; penalty for failure to re-
port; revocation of certificates of approval.

(a) Credit unions shall be under the supervision of the com-
mmissioner of banking. They shall report to him at least semi-
annually on or before the first day of January and the first day
of July of each calendar year, on blanks supplied by the said
commissioner for that purpose. Additional reports may be
required by said commissioner. Credit unions shall be exam-
ined annually by the commissioner of banking, except that, if
a credit union has assets of less than twenty-five thousand
dollars, he may accept the audit of a certified public account-
ant in place of such examination.

(b) The commissioner of banking shall charge and collect
from each credit union and pay into a special revenue account
in the state treasury for the department of banking an annual
assessment payable on the first day of July computed upon
the total assets of the credit union shown on the report of
condition of the credit union as of the last business day in
December of the previous year as is set out in section eight,
article two, chapter thirty-one-a of this code.

(c) For failure to file reports when due, unless excused
for cause, the credit union shall pay to the treasurer of the
state five dollars for each day of its delinquency. If the com-
mmissioner of banking determines that a credit union is vio-
lating any provision of this article, or is insolvent, said com-
missioner may serve notice on such credit union of his inten-
tion to revoke the certificate of approval. If, for a period of
fifteen days after such notice, such violation continues, the
commissioner of banking may revoke such certificate and take
possession of the business and property of such credit union
and maintain possession until such time as he shall permit it
Enr. H. B. 1359]

30 to continue business or its affairs are finally liquidated. He may
31 take similar action if such report remains in arrears for more
32 than fifteen days.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DEPARTMENT OF BANKING.

§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, exam-
ination fees, investigation fees or other necessary expenses in-
curred 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 ac-
count to be known as the "Commissioner's Assessment and
Examination Fund" which is hereby established. The assess-
ments and fees paid into this account shall be appropriated by
law and used to pay the costs and expenses of the department of
banking and all incidental costs and expenses necessary for its
operations. At the end of each fiscal year, after the first day of
July, one thousand nine hundred eighty-three, if the fund con-
tains a sum of money in excess of twenty percent of the appro-
priated budget of the department 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 institu-
tion or bank holding company and pay into a special revenue
account in the state treasury for the department of banking
assessments as follows:

(1) For each state banking institution, a semiannual assess-
ment payable on the first day of January and the first day of
July, each year, computed upon the total assets of the banking
institution shown on the report of condition of the banking in-
stitution filed as of the preceding thirtieth day of June and
thirty-first day of December respectively as follows:
(2) For each industrial loan company an annual assessment as provided for in section thirteen, article seven, chapter thirty-one of this code, as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over Million</td>
<td>Million</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>30</td>
<td>$0</td>
<td>$1</td>
<td>$0</td>
<td>.001000</td>
</tr>
<tr>
<td>31</td>
<td>1</td>
<td>10</td>
<td>1,000</td>
<td>.000125</td>
</tr>
<tr>
<td>32</td>
<td>10</td>
<td>50</td>
<td>2,125</td>
<td>.000095</td>
</tr>
<tr>
<td>33</td>
<td>50</td>
<td>100</td>
<td>5,925</td>
<td>.000060</td>
</tr>
<tr>
<td>34</td>
<td>100</td>
<td>500</td>
<td>8,925</td>
<td>.000050</td>
</tr>
<tr>
<td>35</td>
<td>500</td>
<td>1,000</td>
<td>28,925</td>
<td>.000045</td>
</tr>
</tbody>
</table>

If an industrial loan company'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.

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

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over</td>
<td>Million</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>39</td>
<td>$0</td>
<td>$1,000,000</td>
<td>800</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>1,000,000</td>
<td>5,000,000</td>
<td>800</td>
<td>.000400</td>
</tr>
<tr>
<td>41</td>
<td>5,000,000</td>
<td>10,000,000</td>
<td>2,400</td>
<td>.000200</td>
</tr>
<tr>
<td>42</td>
<td>10,000,000</td>
<td></td>
<td>4,200</td>
<td>.000100</td>
</tr>
</tbody>
</table>

If an industrial loan company'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.
(4) For each bank holding company, an annual assessment shall be made as provided for in section five, article eight-a, chapter thirty-one-a of this code. Such annual assessment shall not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(5) For each supervised lender, an annual assessment as provided for in section one hundred five, article four, chapter forty-six-a of this code. Such annual assessment shall not exceed one hundred dollars on the first twenty-five thousand dollars of total outstanding loan balances and installment sales contract balances less unearned finance charges plus forty cents per thousand dollars on the remaining outstanding balances as of the preceding calendar year-end.

(6) The commissioner shall, during the month of June, one thousand nine hundred eighty-three, and each December and each June thereafter, prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall, further, during the month of June, one thousand nine hundred eighty-three, and each June thereafter, prepare and send to each industrial loan company, each state credit union and each supervised lender a statement of the amount of the assessment due. Such assessments shall be charged for the first day of July, one thousand nine hundred eighty-three, at the amounts as scheduled. The commissioner shall, further, during the month of January, one thousand nine hundred eighty-four, and each January thereafter, prepare and send to each bank holding company a statement of the amount of the assessment due. Such bank holding company assessments shall be charged for the last day of January, one thousand nine hundred eighty-four, at the amounts as scheduled in this subsection.

Subsequent assessments shall be prescribed annually, not later than the fifteenth day of June, by written order of the commissioner, but shall not exceed the maximums as set forth in this subsection. In setting such assessments the primary consideration shall be the amount appropriated by the Legislature for the department of banking for the corresponding annual period. Reasonable notice of such assessments shall be made to all interested parties. All orders of the commissioner for
the purpose of setting assessments shall not be subject to the provisions of the West Virginia Administrative Procedures Act, chapter twenty-nine-a of this code.

(c) 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 department of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner.

(d) 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 this state, or pay the reasonable and necessary expenses for the commissioner or his 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 behalf.

(e) The commissioner of banking may maintain an action for the recovery of all such assessments, costs and expenses in any court of competent jurisdiction.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-5. Requirements and procedure for incorporation of state banks.

A state bank may be organized by five or more incorporators, a majority of whom shall be residents of the state of West Virginia. Such banking institution shall have as a part of its corporate name or title one or more of the following words indicative of the business which it is authorized to conduct, namely, "bank," "banking company," "banking association," "trust company," "banking and trust company" or "bank and trust company."

The incorporators shall file with the board an agreement of incorporation, in duplicate, following generally the form prescribed by the secretary of state for chartering corporations under provisions of article one, chapter thirty-one of this
code. The information set forth in the agreement shall include the following:

1. The name of the proposed bank;
2. The community and county in which the bank is to be located, together with the post-office address of the place of business of the bank;
3. Whether such bank proposes also to engage in the trust business;
4. The name, residence and occupation of each incorporator, and the amount of capital stock subscribed and paid for by each;
5. The names of the persons who are to serve as officers and directors of the banking institution and the official position proposed to be held by each; and
6. The total authorized capital stock of the institution.

The agreement of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the board, shall be accompanied by the statutory corporation charter fees, and an examination and investigation fee of two thousand five hundred dollars payable to the board. When transmitting the agreement to the board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the board may communicate, on whom the board may call for further information, and to whom the board may officially report as to action on the agreement so filed with him. The agreement shall constitute and may be considered and treated by the board as an application for the board’s approval to incorporate and organize a banking institution in this state.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-5. Registration and reporting of bank holding companies; annual fee.

(a) For the purposes of this section, other than subsection (f), a “bank holding company” shall include, in addition to a bank holding company defined in subdivision (1), sub-
section (a), section three of this article, any other bank
holding company subject to regulation under Title 12 United
States Code, §§1841-1850 (being the act of Congress entitled
the Bank Holding Company Act of 1956, as amended),
which has acquired or established a place of business in this
state or a subsidiary which has a place of business in this
state.

(b) On the first day of July, one thousand nine hundred
eighty-two, and annually thereafter on dates established by
the commissioner, each bank holding company shall register
with the commissioner on forms provided or prescribed by
him, which shall include such information with respect to
the financial condition, operation, management and inter-
company relationships of the bank holding company and its
subsidiaries and related matters as the commissioner may
deem necessary or appropriate to carry out the purposes of
this article.

(c) The commissioner is authorized to issue such regula-
tions and orders as may be necessary to enable him or
the board to administer and carry out the purposes of this
article and prevent evasions thereof.

(d) The commissioner from time to time may require
reports under oath to keep him informed as to whether the
provisions of this article and such regulations and orders
thereunder issued by him have been complied with, may make
examinations of each bank holding company and each sub-
sidiary thereof, and shall, as far as possible, use the reports
of examination made by the comptroller of the currency,
federal deposit insurance corporation, or the board of govern-
ors of the federal reserve system for the purposes of this
section.

(e) Bank holding companies and subsidiaries or affiliates
thereof shall be regulated, controlled and examined by the
commissioner to the same extent that he regulates, controls
and examines state banks and other financial institutions under
his jurisdiction. The commissioner is hereby authorized to
promulgate rules and regulations and registration procedures
for the regulation, examination and control of bank holding companies doing business in this state.

(f) The commissioner of banking shall charge and collect from each bank holding company and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable on the last day of January computed upon the total deposits of the bank holding company shown on the consolidated financial statement as of the last business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code. The payment of such registration fee shall be accompanied by a report on forms prescribed by the commissioner.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-105. Examinations; assessments and investigations.

(1) The commissioner shall examine annually the loans, business and records of every licensee. In addition, for the purpose of discovering violations of this article or securing information lawfully required, the attorney general or the commissioner may at any time investigate the loans, business and records of any supervised lender. For these purposes he shall have free and reasonable access to the offices, places of business and records of the lender.

(2) If the lender's records are located outside this state, the lender at his option shall make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his 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 behalf.

(3) For the purposes of this section, the commissioner may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel
their attendance, adduce evidence, and require the production
of any matter which is relevant to the investigation, including
the existence, description, nature, custody, condition and loca-
tion of any books, documents or other tangible things and
the identity and location of persons having knowledge of rele-
vant facts, or any other matter reasonably calculated to lead to
the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena
or to give testimony and upon reasonable notice to all persons
affected thereby, the commissioner may apply to any circuit
court of this state for an order compelling compliance.

(5) The commissioner of banking shall charge and collect
from each supervised lender and pay into a special revenue
account in the state treasury for the department of banking an
annual assessment payable on the first day of July computed
upon the total outstanding loan balances and installment sales
contract balances less unearned finance charges as of the pre-
ceding calendar year-end as is set out in section eight, article
two, chapter thirty-one-a of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. David
Chairman Senate Committee

Samuel Queen
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Sidell J. Willis
Clerk of the Senate

Donald H. Hoff
Clerk of the House of Delegates

William L. Merchant
President of the Senate

John W. B. Steele
Speaker House of Delegates

The within is approved this the __________________ day of March, 1983.

John D. Bolinger
Governor