WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 326

(By Senator Manchin, et al.)

PASSED March 9, 1996

In Effect NINETY DAYS FROM Passage
ENROLLED

Senate Bill No. 326

(By Senators Manchin, Helmick, Craigo, Dittmar, Sharpe, Wagner, Kimble, Scott, Blatnik, Chafin, Wiedebusch and Yoder)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and eighteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five, six and seven, article two, chapter thirty-one-a of said code; and to amend and reenact section one hundred five, article one, chapter forty-six-a of said code, all relating to requiring the registration and licensing of consumer lending offices other than mortgage loan companies operating in West Virginia and modifying other banking institution requirements; revising secondary mortgage loan law; changing definitions; removing residency requirements for brokers; modifying maximum loan periods and acceptable loan charges; increasing bonding requirements for brokers; modifying application requirements for brokers; requir-
ing the commissioner of banking to study the effects of longer allowable loan periods for second mortgages; precluding brokers from receiving any charges until loan is issued; redefining certain activities as unfair trade practices; allowing the banking commissioner certain discretion relating to periodic examination of brokers records; modifying grounds for revocation of licenses; modifying hearing requirements; referring and adopting penalties sections of consumer credit laws; establishing additional licensing requirements for brokers; establishing a per hour fee amount in which the commissioner of banking may charge financial institutions for periodic record reviews; modifying the release of record requirements of the banking commissioner; and clarifying what happens when the provisions contained herein are in conflict with other provisions of chapter thirty-one.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 31. CORPORATIONS.

ARTICLE 17. SECONDARY MORTGAGE LOANS.

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (1) “Secondary mortgage loan” means a loan made to an individual or partnership which is secured in whole or in part by a mortgage or deed of trust upon any interest in real property used as a dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages, deeds of trust or vendor’s liens.
(2) "Person" means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof.

(3) "Lender" means any person who makes or offers to make or accepts or offers to accept any secondary mortgage loan in the regular course of business. A person shall be deemed to be acting in the regular course of business if he or she makes or accepts, or offers to make or accept, more than five secondary mortgage loans in any one calendar year.

(4) "Broker" means any person who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, a secondary mortgage loan between a lender and a borrower.

(5) "Brokerage fee" means the fee or commission or other consideration charged by a broker for the services described in subsection (4) of this section.

(6) "Principal" or "principal sum" means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

(b) The amount of any discount excluded from the loan finance charge; and

(c) To the extent that payment is deferred:

(i) Amounts actually paid or to be paid by the lender for registration, certificate of title or license fees if not included in subdivision (a) of this subsection; and

(ii) Additional charges permitted by this article.

(7) "Additional Charges" means every type of charge arising out of the making or acceptance of a secondary mortgage loan, except finance charges, including, but not limited to, official fees and taxes, reasonable closing costs and certain documentary charges and insurance premiums and other charges which definition is to be read in conjunction with, and permitted by section one hundred nine, article three, chapter forty-six-a of this
(8) "Finance charge" means the sum of all interest and similar charges payable directly or indirectly by the debtor imposed or collected by the lender incident to the extension of credit, as coextensive with the definition of "loan finance charge" set forth in section one hundred two, article one, chapter forty-six-a of this code.

(9) "Commissioner" means the commissioner of banking of this state.

(10) "Applicant" means a person who has applied for a lender's or broker's license.

(11) "Licensee" means any person duly licensed by the commissioner under the provisions of this article as a lender or broker.

(12) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment, whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this article.

§31-17-2. License required for lender or broker; exemptions.

(a) No person shall engage in this state in the business of lender or broker unless and until he or she shall first obtain a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked,
and no foreign corporation shall, notwithstanding the
provisions of section seventy-nine-a, article one of this
chapter, engage in such business in this state unless it
shall qualify to hold property and transact business in
this state.

(b) The provisions of this article do not apply to loans
made by banking institutions, trust companies, savings
and loan associations, industrial loan companies, insur-
ance companies, credit unions or any federally insured
depository institution, or to loans made by any other
lender licensed by and under the supervision of any
agency of the federal government, or to loans made by, or
on behalf of, any agency or instrumentality of this state
or federal government or by a nonprofit community
development organization which loans are subject to
federal or state government supervision and oversight.

§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals.

(a) Application for a lender's or broker's license shall
each year be submitted in writing under oath, in the
form prescribed by the commissioner, and shall contain
the full name and address (both of the residence and
place of business) of the applicant and, if the applicant
is a partnership or association, of every member thereof,
and, if a corporation, of each officer, director and owner
of five percent or more of the capital stock thereof, and
such further information as the commissioner may
reasonably require. Any application shall also disclose
the location in this state at which the business of lender
or broker is to be conducted.

(b) At the time of making application for a lender's
license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from
the secretary of state certifying that such applicant has
qualified to hold property and transact business in this
state;

(2) Submit proof that he or she has available for the
operation of the business at the location specified in the
application net assets of at least two hundred fifty
thousand dollars;

(3) File with the commissioner a bond in favor of the
state in the amount of one hundred thousand dollars, in
such form and with such conditions as the commissioner
may prescribe, and executed by a surety company
authorized to do business in this state;

(4) Pay to the commissioner a license fee of one thou-
sand dollars and an investigation fee of two hundred
fifty dollars. If the commissioner shall determine that an
investigation outside this state is required to ascertain
facts or information relative to the applicant or informa-
tion set forth in the application, the applicant may be
required to advance sufficient funds to pay the estimated
cost of the investigation. An itemized statement of the
actual cost of the investigation outside this state shall be
furnished to the applicant by the commissioner, and the
applicant shall pay or shall have returned to him or her,
as the case may be, the difference between his or her
payment in advance of the estimated cost and the actual
cost of the investigation; and

(5) Submit proof that the applicant is a business in
good standing in its state of incorporation, or if not a
corporation, its state of business registration, and a full
and complete disclosure of any litigation or unresolved
complaint filed by a governmental authority or class
action law suit on behalf of consumers relating to the
operation of the license applicant.

(c) At the time of making application for a broker's
license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from
the secretary of state certifying that the applicant has
qualified to hold property and transact business in this
state;

(2) Submit proof that he or she has available for the
operation of the business at the location specified in the
application net assets of at least ten thousand dollars;

(3) File with the commissioner a bond in favor of the state in the amount of one hundred thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

(4) Pay to the commissioner a license fee of one hundred dollars and an investigation fee of fifty dollars; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action law suit on behalf of consumers relating to the operation of the license applicant.

(d) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of such bond.

(e) Nonresident lenders and brokers licensed under this article by their acceptance of such license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a and section thirty-three, article three, chapter fifty-six of this code.

§31-17-5. Refusal or issuance of license.

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to the applicant and his or her application for a lender's or broker's license, as the case may be. Upon the basis of the application and all other information before him or her, the commissioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:

(1) The applicant does not have available the net assets
required by the provisions of section four of this article;

(2) The applicant (individually, if an individual, or the partners, if a partnership, or the officers and directors, if a corporation) is of such character and reputation as reasonably to warrant the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article;

(3) The applicant has habitually defaulted on financial obligations; or

(4) The applicant has done any act or has failed or refused to perform any duty or obligation for which the license sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant a lender's or broker's license which shall entitle the applicant to engage in the business of lender or broker, as the case may be, during the period, unless sooner suspended or revoked, for which the license is issued.

(b) Every application for a lender's or broker's license shall be passed upon and the license issued or refused within forty-five days after the applicant therefor has fully complied with the provisions of section four of this article. Under no circumstances whatever shall the same person hold both a lender's and a broker's license. Whenever an application for a lender's or broker's license is denied and the license sought is refused, which refusal has become final, the commissioner shall retain the investigation fee or fees but shall return the license fee to the applicant.

§31-17-6. Minimum net assets to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.

At all times, a licensee shall: (1) Have available the net assets required by the provisions of section four of this article; (2) keep the bond required by said section in full
force and effect; and (3) if the licensee be a foreign corporation, remain qualified to hold property and transact business in this state.

§31-17-8. Maximum period of loan; maximum interest and charge or charges; insurance; other prohibitions.

(a) The maximum rate of finance charges and maximum total additional charges on or in connection with any such secondary mortgage loan shall be as follows:

(1) The maximum rate of finance charge shall not exceed eighteen percent per year on the unpaid balance of the amount financed: Provided, That the borrower shall have the right to prepay his or her debt in whole or in part at any time and shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees and loan origination fees, which rebate shall be computed in accordance with section one hundred eleven, article three, chapter forty-six-a of this code: Provided, however, That the sum of any points, investigation fees and loan origination fees charged may not exceed five percent of the amount financed;

(2) A secondary mortgage loan shall be payable over a period not to exceed sixty months. This sixty-month maximum loan period is temporarily extended, as of the effective date of this section, to one hundred twenty months until the first day of July, two thousand, at which time it reverts to the sixty-month maximum loan limit time period. The commissioner shall report to the Legislature by the first day of July, one thousand nine hundred ninety-nine, on the impact of this extended loan time period upon the citizens of this state. The report shall include analysis of the impact of this loan period extension on the secondary mortgage industry in this state, impacts of this extension on various socio-economic classes of citizens of this state, statistics regarding the number of homes which have been foreclosed upon based on this extension and the effect of this extension to any other citizens of this state. The commissioner may
require any licensee to provide the commissioner with any information necessary to make this report;

(3) The total of additional charges as permitted by this section and by section one hundred nine, article three, chapter forty-six-a of this code, excluding official fees and taxes, and insurance, may equal, but shall not be in excess of, ten percent of the principal sum: Provided,

That where the principal sum at the inception of the secondary mortgage loan is one thousand five hundred dollars or less, the total additional charge or charges, excluding official fees, taxes and insurance, may exceed said ten percent, but shall not be in excess of one hundred fifty dollars: Provided, however, That no additional charges other than official fees, taxes and hazard insurance may be required by the same or affiliated lender more often than once each twenty-four months by renewal of a secondary mortgage loan or an additional secondary mortgage loan secured by the same;

(4) Where loan origination fees, investigation fees or points have been charged by the licensee, such fees may not be imposed again by the same or affiliated lender in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method, or the total of the earlier and current changes does not exceed the five percent amount.

(b) Notwithstanding the provisions of subsection (a) of this section, a delinquent or “late charge” may be charged on any installment made ten or more days after the regularly scheduled due date in accordance with section one hundred twelve or section one hundred thirteen, article three, chapter forty-six-a of this code, whichever is applicable. The charge may be made only once on any one installment during the term of the secondary mortgage loan.

(c) Hazard insurance may be required by the lender of the borrower, as provided in section one hundred nine,
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article three, chapter forty-six-a of this code. Decreasing term life insurance, in an amount not exceeding the amount of the secondary mortgage loan and for a period not exceeding the term of the loan, and accident and health insurance in an amount sufficient to make the monthly payments due on said loan in the event of the disability of the borrower and for a period not exceeding the life of said loan, may also be offered by the lender to the borrower and the premium therefor may be financed. The charges for any insurance shall not exceed the standard rate approved by the insurance commissioner for such insurance. Proof of all insurance in connection with secondary mortgage loans subject to this article shall be furnished to the borrower within thirty days from and after the date of application therefor by said borrower.

(d) No application fee may be allowed whether or not the secondary mortgage loan is consummated; however, the borrower may be required to reimburse the lender for actual expenses incurred by the lender after acceptance and approval of a secondary mortgage loan proposal made in accordance with the provisions of this article which is not consummated because of:

(1) The borrower's willful failure to close said loan; or

(2) The borrower's false or fraudulent representation of a material fact which prevents closing of said loan as proposed.

(e) No licensee shall make, offer to make, accept or offer to accept, any secondary mortgage loan except on the terms and conditions authorized in this article.

(f) No licensee shall induce or permit any husband and wife, jointly and severally, to become obligated to the licensee under this article, directly or contingently, or both, under more than one secondary mortgage loan at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.
(g) No instrument evidencing or securing a secondary mortgage loan shall contain:

(1) Any acceleration clause under which any part or all of the unpaid balance of the obligation not yet matured may be declared due and payable because the holder deems himself to be insecure;

(2) Any power of attorney to confess judgment or any other power of attorney;

(3) Any provision whereby the borrower waives any rights accruing to him under the provisions of this article;

(4) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount, or unless the loan is structured as a revolving line of credit having no set final payment date; or

(5) Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned.

(h) No broker licensee shall charge a borrower or receive from a borrower money or other valuable consideration before completing performance of all services the broker has agreed to perform for the borrower, unless the licensee also registers and complies with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of this code, including all additional bonding requirements as may be established therein.

(i) No lender licensee shall make revolving loans secured by a secondary mortgage lien for the retail purchase of consumer goods and services by use of a lender credit card.

§31-17-9. Disclosure; closing statements; other records required.
(a) Any licensee or person making on his own behalf, or as agent, broker or in other representative capacity on behalf of any other person, a secondary mortgage loan, whether lawfully or unlawfully, shall at the time of the closing furnish to the borrower a complete and itemized closing statement which shall show in detail:

(1) The amount and date of the note or secondary mortgage loan contract and the date of maturity;
(2) The nature of the security;
(3) The finance charge rate per annum and the itemized amount of finance charges and additional charges;
(4) The amount financed and total of payments;
(5) Disposition of the principal;
(6) A description of the payment schedule;
(7) The terms on which additional advances, if any, will be made;
(8) The charge to be imposed for past due installments;
(9) A description and the cost of insurance required by the lender or purchased by the borrower in connection with the secondary mortgage loan;
(10) The name and address of the borrower and of the lender; and
(11) That the borrower may prepay the secondary mortgage loan in whole or in part on any installment date, and that the borrower will receive a rebate in full for any unearned finance charge.

Such detailed closing statement shall be signed by the lender or his representative, and a completed and signed copy thereof shall be retained by the lender and made available at all reasonable times to the borrower, the borrower's successor in interest to the residential property, or the authorized agent of the borrower or the borrower's successor, until the time as the indebtedness shall be satisfied in full.
The commissioner may, from time to time, by rules prescribe additional information to be included in a closing statement.

(b) Upon written request from the borrower, the holder of a secondary mortgage loan instrument shall deliver to the borrower, within ten days from and after receipt of the written request, a statement of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. Not more than two statements shall be requested in any twelve-month period.

(c) Upon satisfaction of a secondary mortgage loan obligation in full, the holder of the instrument evidencing or securing the obligation shall deliver to the borrower a recordable release and all writings signed by the borrower which were incident to applying for and obtaining the secondary mortgage loan.

§31-17-10. Advertising requirements.

It shall be unlawful and an unfair trade practice for any person to cause to be placed before the public in this state, directly or indirectly, any false, misleading or deceptive advertising matter pertaining to secondary mortgage loans or the availability thereof: Provided, that this section shall not apply to the owner, publisher, operator or employees of any publication or radio or television station which disseminates such advertising matter without actual knowledge of the false or misleading character thereof.

§31-17-11. Records and reports; examination of records; analysis.

(a) Every licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and
records shall be preserved, exhibited to the commis-
sioner and kept available as provided herein for the
reasonable period of time as the commissioner may by
rules require. The commissioner is hereby authorized to
prescribe by rules the minimum information to be shown
in the books, accounts and records.

(b) Each licensee shall file with the commissioner on or
before the fifteenth day of April of each year a report
under oath or affirmation concerning his or her business
and operations in this state for the preceding license year
in the form prescribed by the commissioner, which shall
show the annual volume and outstanding amounts of
secondary mortgage loans, the classification of the
secondary mortgage loans by size and by security, and
the gross income from, and expenses properly chargeable
to, such secondary mortgage loans.

(c) The commissioner may, at his or her discretion,
make or cause to be made an examination of the books,
accounts and records of every licensee pertaining to
secondary mortgage loans made in this state under the
provisions of this article, for the purpose of determining
whether each licensee is complying with the provisions
hereof and for the purpose of verifying each licensee’s
annual report. If the examination is made outside this
state, the licensee shall pay the cost thereof in like
manner as applicants are required to pay the cost of
investigations outside this state.

(d) The commissioner shall publish annually an analy-
sis of the information furnished in accordance with the
provisions of subsection (b) of this section, but the
individual reports shall not be public records and shall
not be open to public inspection.

§31-17-12. Grounds for suspension or revocation of license;
suspension and revocation generally; rein-
statement or new license.

(a) The commissioner may suspend or revoke any
license issued hereunder if he or she finds that the
licensee and/or any owner, director, officer, member, partner, stockholder, employee or agent of such licensee:

(1) Has knowingly violated any provision of this article or any order, decision or rule of the commissioner lawfully made pursuant to the authority of this article; or

(2) Has knowingly made any material misstatement in the application for such license; or

(3) Does not have available the net assets required by the provisions of section four of this article; or

(4) Has failed or refused to keep the bond required by section four of this article in full force and effect; or

(5) In the case of a foreign corporation, does not remain qualified to do business in this state; or

(6) Has committed any fraud or engaged in any dishonest activities with respect to such secondary mortgage loan business in this state, or failed to disclose any of the material particulars of any secondary mortgage loan transaction in this state to anyone entitled to the information; or

(7) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt, and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section shall not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty six-a of this code.

The commissioner may also suspend or revoke the license of a licensee if he or she finds the existence of any ground upon which the license could have been
refused, or any ground which would be cause for refusing a license to such licensee were he then applying for the same. The commissioner may also suspend or revoke the license of a licensee pursuant to his or her authority under section thirteen, article two, chapter thirty-one-a of this code in an individual case.

(b) The suspension or revocation of the license of any licensee shall not impair or affect the obligation of any preexisting lawful secondary mortgage loan between such licensee and any obligor.

c) The commissioner may reinstate a suspended license, or issue a new license to a licensee whose license has been revoked, if the grounds upon which any such license was suspended or revoked have been eliminated or corrected and the commissioner is satisfied that the grounds are not likely to recur.

§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

(a) Whenever the commissioner shall refuse to issue a license, or shall suspend or revoke a license, he shall make and enter an order to that effect and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee, as the case may be.

(b) Whenever a license is suspended or revoked, the commissioner shall in the order of suspension or revocation direct the licensee to return to the commissioner its license. It shall be the duty of the licensee to comply with any such order: (i) Immediately if the license were suspended either following a hearing or for failure to keep the bond required by the provisions of section four of this article in full force and effect; or otherwise (ii) following expiration of the period provided in section fourteen of this article in which such licensee, if not previously provided the opportunity to a hearing on the matter, may demand a hearing before the commissioner
without such demand having been timely made.

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

(a) Any applicant or licensee, as the case may be, adversely affected by an order made and entered by the commissioner in accordance with the provisions of section thirteen of this article, if not previously provided the opportunity to a hearing on the matter, may in writing demand a hearing before the commissioner. The written demand for a hearing must be filed with the commissioner within thirty days after the date upon which the applicant or licensee was served with a copy of such order. The timely filing of a written demand for hearing shall stay or suspend execution of the order in question, pending a final determination, except for an order suspending a license for failure of the licensee to maintain required by section four of this article in full force and effect. If a written demand is timely filed as aforesaid, the aggrieved party shall be entitled to a hearing as a matter of right.

(b) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article were set forth in extenso in this subsection.

(c) For the purpose of conducting any such hearing hereunder, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served in the manner, within the time and for the fees and shall be enforced, as specified in said section, and all of the said section provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.
(d) Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written demand therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on his own motion, or for good cause shown upon the application of the aggrieved party. At any such hearing, the aggrieved party may represent himself or be represented by any attorney-at-law admitted to practice before any circuit court of this state.

(e) After such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall make and enter an order affirming, modifying or vacating his earlier order, or shall make and enter such order as is deemed appropriate, meet and proper. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the aggrieved party and his attorney of record, if any, in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served. The order of the commissioner shall be final unless vacated or modified on judicial review thereof in accordance with the provisions of section fifteen of this article.


(a) Any person adversely affected by a final order made and entered by the commissioner after hearing held in accordance with the provisions of section fourteen of this article is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provi-
sections of section one, article six, chapter twenty-nine-a of
this code.

(c) Legal counsel and services for the commissioner in
all appeal proceedings in any circuit court and the
supreme court of appeals shall upon request be provided
by the attorney general or his assistants, all without
additional compensation.

§31-17-16. Actions to enjoin violations.

(a) Whenever it appears to the commissioner that any
person has been or is violating or is about to violate any
provision of this article, any rules of the commissioner or
any final order of the commissioner, the commissioner
may apply in the name of the state, to the circuit court of
the county in which the violation or violations, or any
part thereof, has occurred, is occurring or is about to
occur, or the judge thereof in vacation, for an injunction
against such person and any other persons who have
been, are or are about to be, involved in, or in any way
participating in, any practices, acts or omissions, so in
violation, enjoining such person or persons from any
such violation or violations. Such application may be
made and prosecuted to conclusion whether or not any
such violation or violations have resulted or shall result
in prosecution or conviction under the provisions of
section eighteen of this article.

(b) Upon application by the commissioner as aforesaid,
the circuit courts of this state may by mandatory or
prohibitory injunction compel compliance with the
provisions of this article, any rules of the commissioner
and all final orders of the commissioner. The court may
issue a temporary injunction in any case pending a
decision on the merits of any application filed.

(c) The judgment of the circuit court upon any applica-
tion permitted by the provisions of this section shall be
final unless reversed, vacated or modified on appeal to
the supreme court of appeals. Any such appeal shall be
sought in the manner and within the time provided by
§31-17-18. Violations and penalties.

(a) Any person, or any member, officer, director, agent or employee of such person, who violates or participates in the violation of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in a county or regional jail for not more than six months, or both fined and imprisoned, at the discretion of the court.

(b) The penalties and remedies embodied in this article are not exclusive, but are cumulative with other applicable provisions of this code, including, but not limited to, the consumer protection laws in chapter forty-six-a of this code.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.

§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 the 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 the license or certificate shall be
upon the forms and contain such information as the
commissioner may prescribe. In connection with the
applications every corporate financial institution shall
file a certified copy of its charter and bylaws, a state-
ment as to the amount of capital that has been sub-
scribed 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 banking institution,
the commissioner of banking shall examine the informa-
tion, documents and statements submitted and, if he or
she finds that the 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
institute other than a banking institution, the commis-
sioner of banking shall examine the information, docu-
ments and statements submitted, and, if he or she finds
that the financial institution has adequate resources for
the proposed business and has provided practical, safe,
just and equitable rules and methods for the manage-
ment 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: Provided, That any
supervised lender which is operating in good standing in accordance with the provisions of article four, chapter forty-six-a of this code shall be presumed to have established that the public convenience and advantage will be promoted in regard to its application for a certificate of authority to operate as an industrial loan company as defined in article seven, chapter thirty-one of this code in the same location for which it is licensed as a supervised lender. The certificate or license shall be preserved and the original or copy thereof displayed in all the West Virginia places of business of the banking or other financial institution.

(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 shall file with the commissioner of banking a copy of the bylaws under which it operates, together with a legal citation 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 the foreign corporation and if he or she finds that it provides 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 the corporation a certificate or license permitting it to engage in business in this state, which certificate or license shall authorize the 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 the 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 one hundred dollars, 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. The certificate or license shall be preserved and the original or copy thereof displayed in the West Virginia place of business of the 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 one hundred dollars.

(g) No amendment of the charter or bylaws of any domestic or foreign corporation 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 the proposed change within twenty days after it is received by him or her, it shall be deemed to have been approved.

(h) 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 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.

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

The commissioner of banking shall make, at least once
every eighteen months, a thorough examination of all the books, accounts, records and papers of every depository financial institution. He or she shall carefully examine all of the assets of each such 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 such examination of any subsidiaries or affiliates of a financial institution as he or she may deem 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 such financial institution. A full report of every examination shall be made and filed and preserved in the office of the commissioner and a copy thereof forthwith 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 born by the financial institution at a rate of fifty dollars per each examiner hour expended.

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

to the board of directors at the next meeting after the
receipt thereof, and the president, or other executive
officer, of the institution shall forthwith notify the
commissioner in writing of the presentation and reading
of the communication and of any action taken thereon by
the institution.

The commissioner of banking, in his or her discretion,
may 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 re-
quired 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; but nothing herein shall be con-
strued 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.

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

1 All officers, directors, employees and other persons
connected with any financial institution, upon request of
the commissioner of banking, or his or her duly autho-
rized 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.

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

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

(a) This chapter does not apply to:

(1) Extensions of credit to government or governmental agencies or instrumentalities;

(2) The sale of insurance by an insurer, except as otherwise provided in this chapter;

(3) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(4) Licensed pawnbrokers.

(b) Secondary mortgage lender and broker licensees are excluded from the provisions of this chapter to the extent those provisions directly conflict with any section of article seventeen, chapter thirty-one of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st day of April, 1996.

Governor