

RECEIVED

97 MAR 26 10 2 21

CITY OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 71

(By Senator HELVICK, ET AL)

PASSED MARCH 11, 1997

In Effect NINETY DAYS FROM Passage

RECEIVED

97 MAR 25 10 3 21

OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

Senate Bill No. 71

(BY SENATORS HELMICK, SNYDER, CHAFIN, CRAIGO, DITTMAR,
FANNING, PREZIOSO, SHARPE, WIEDEBUSCH,
WOOTON, DEEM, KIMBLE AND SCOTT)

[Passed March 11, 1997; in effect ninety days from passage.]

AN ACT to repeal sections ten and fifteen, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, four, five, nine and eleven, article seventeen, chapter thirty-one of said code; to amend and reenact sections four, six and eight, article two, chapter thirty-one-a of said code; to amend and reenact section three, article three of said chapter; to amend and reenact sections nine, fourteen, fourteen-a, fifteen, thirty and thirty-a, article four of said chapter; to amend and reenact sections twelve, twelve-a and twelve-b, article eight of said chapter; to amend and reenact section five, article one, chapter thirty-one-c of said code; to amend and reenact section one hundred four, article three, chapter forty-six-a of said code; to amend and reenact sections one hundred four, one hundred seven and one hundred eleven, article

four of said chapter; and to amend and reenact section eight, article twenty-four, chapter forty-seven of said code, all relating to second mortgage companies; banks and banking; credit unions; regulated consumer lenders; reverse mortgages; defining terms; correcting code cite references; deleting conflicting reporting requirements; ending report on effect to credit availability of business franchise tax; clarifying the assignment and securitization of second mortgages; secondary mortgage broker bond requirements; permitting second mortgage lenders to be brokers; conforming provision of account statements and release of second mortgage liens with other code sections; provision of payoff statements upon request in second mortgage loans; sharing and acceptance of out-of-state bank agency reports; deleting obsolete provisions on interest rate restrictions; notification requirements for ATM placement and parity of out-of-state bank terminals; bank messenger services; financing certain loan processing fees; loan disclosure requirements; credit union exam schedule; and reverse mortgage exemptions.

Be it enacted by the Legislature of West Virginia:

That sections ten and fifteen, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, four, five, nine and eleven, article seventeen, chapter thirty-one of said code be amended and reenacted; that sections four, six and eight, article two, chapter thirty-one-a of said code be amended and reenacted; that section three, article three of said chapter be amended and reenacted; that sections nine, fourteen, fourteen-a, fifteen, thirty and thirty-a, article four of said chapter be amended and reenacted; that sections twelve, twelve-a and twelve-b, article eight of said chapter be amended and reenacted; that section five, article one, chapter thirty-one-c of said code be amended and reenacted; that section one hundred four, article three, chapter forty-six-a of said code be amended and reenacted; that sections one hundred four, one hundred seven and one hundred eleven, article four of said chapter be amended and reenacted; and that section eight, article twenty-four, chapter forty-seven 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
3 individual or partnership which is secured in whole or in
4 part by a mortgage or deed of trust upon any interest in
5 real property used as a dwelling with accommodations for
6 not more than four families, which property is subject to
7 the lien of one or more prior recorded mortgages or deeds
8 of trust.

9 (2) "Person" means an individual, partnership, associa-
10 tion, trust, corporation or any other legal entity, or any
11 combination thereof.

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

19 (4) "Broker" means any person acting in the regular
20 course of business who, for a fee or commission or other
21 consideration, negotiates or arranges, or who offers to
22 negotiate or arrange, a secondary mortgage loan between
23 a lender and a borrower. A person shall be deemed to be
24 acting in the regular course of business if he or she
25 negotiates or arranges, or offers to negotiate or arrange,
26 more than five secondary mortgage loans in any one
27 calendar year; or if he or she seeks to charge a borrower or
28 receive from a borrower money or other valuable consid-
29 eration in any second mortgage transaction before com-
30 pleting performance of all broker services that he or she
31 has agreed to perform for the borrower.

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

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

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

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

40 (c) To the extent that payment is deferred:

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

44 (ii) Additional charges permitted by this article.

45 (7) "Additional charges" means every type of charge
46 arising out of the making or acceptance of a secondary
47 mortgage loan, except finance charges, including, but not
48 limited to, official fees and taxes, reasonable closing costs
49 and certain documentary charges and insurance premiums
50 and other charges which definition is to be read in con-
51 junction with, and permitted by section one hundred nine,
52 article three, chapter forty-six-a of this code.

53 (8) "Finance charge" means the sum of all interest and
54 similar charges payable directly or indirectly by the
55 debtor imposed or collected by the lender incident to the
56 extension of credit, as coextensive with the definition of
57 "loan finance charge" set forth in section one hundred
58 two, article one, chapter forty-six-a of this code.

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

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

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

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

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

70 in cash or in property traded in;

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

74 (c) If not included in the cash price:

75 (i) Any applicable sales, use, privilege, excise or docu-
76 mentary stamp taxes;

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

79 (iii) Additional charges permitted by this article.

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

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

10 (b) The provisions of this article do not apply to loans
11 made by federally insured depository institutions, regu-
12 lated consumer lender licensees, insurance companies, or
13 to loans made by any other lender licensed by and under
14 the supervision of any agency of the federal government,
15 or to loans made by, or on behalf of, any agency or instru-
16 mentality of this state or federal government or by a
17 nonprofit community development organization which
18 loans are subject to federal or state government supervi-
19 sion and oversight. Loans made subject to this exemption
20 may be assigned, transferred, sold or otherwise securitized
21 to any person and shall remain exempt from the provi-
22 sions of this article, except as to reporting requirements in
23 the discretion of the commissioner where the person is a
24 licensee under this article.

25 (c) A person or entity designated in subsection (b) of this
26 section may take assignments of a secondary mortgage

27 loan from a licensed lender, and the assignments of said
28 loans that they themselves could have lawfully made as
29 exempt from the provisions of this article under this
30 section do not make that person or entity subject to the
31 licensing, bonding, reporting or other provisions of this
32 article, except as such defense or claim would be pre-
33 served pursuant to section one hundred two, article two,
34 chapter forty-six-a of this code.

35 (d) The placement or sale for securitization of a second
36 mortgage loan into a secondary market by a licensee shall
37 not subject the secondary market holder to the provisions
38 of this article: *Provided*, That either the trustee under such
39 an arrangement is a licensee, or person or entity entitled
40 to make exempt loans of that type under this section, or
41 the loan is held with right of recourse to a licensee, or
42 person or entity entitled to make exempt loans of that
43 type, who also either retains the servicing rights to the
44 loan or otherwise has the servicing done in its name by an
45 agent or third party.

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

1 (a) Application for a lender's or broker's license shall
2 each year be submitted in writing under oath, in the form
3 prescribed by the commissioner, and shall contain the full
4 name and address of the applicant and, if the applicant is
5 a partnership or association, of every member thereof,
6 and, if a corporation, of each officer, director and owner
7 of five percent or more of the capital stock thereof, and
8 such further information as the commissioner may reason-
9 ably require. Any application shall also disclose the
10 location at which the business of lender or broker is to be
11 conducted.

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

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

18 (2) Submit proof that he or she has available for the
19 operation of the business at the location specified in the
20 application net assets of at least two hundred fifty thou-
21 sand dollars;

22 (3) File with the commissioner a bond in favor of the
23 state in the amount of one hundred thousand dollars, in
24 such form and with such conditions as the commissioner
25 may prescribe, and executed by a surety company autho-
26 rized to do business in this state;

27 (4) Pay to the commissioner a license fee of one thousand
28 dollars and an investigation fee of two hundred fifty
29 dollars. If the commissioner shall determine that an
30 investigation outside this state is required to ascertain
31 facts or information relative to the applicant or informa-
32 tion set forth in the application, the applicant may be
33 required to advance sufficient funds to pay the estimated
34 cost of the investigation. An itemized statement of the
35 actual cost of the investigation outside this state shall be
36 furnished to the applicant by the commissioner, and the
37 applicant shall pay or shall have returned to him or her, as
38 the case may be, the difference between his or her pay-
39 ment in advance of the estimated cost and the actual cost
40 of the investigation; and

41 (5) Submit proof that the applicant is a business in good
42 standing in its state of incorporation, or if not a corpora-
43 tion, its state of business registration, and a full and
44 complete disclosure of any litigation or unresolved
45 complaint filed by a governmental authority or class
46 action lawsuit on behalf of consumers relating to the
47 operation of the license applicant.

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

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

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

56 (3) File with the commissioner a bond in favor of the
57 state in the amount of twenty-five thousand dollars, in
58 such form and with such conditions as the commissioner
59 may prescribe, and executed by a surety company autho-
60 rized to do business in this state;

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

63 (5) Submit proof that the applicant is a business in good
64 standing in its state of incorporation, or if not a corpora-
65 tion, its state of business registration, and a full and
66 complete disclosure of any litigation or unresolved
67 complaint filed by a governmental authority or class
68 action lawsuit on behalf of consumers relating to the
69 operation of the license applicant.

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

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

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

1 (a) Upon an applicant's full compliance with the provi-
2 sions of section four of this article, the commissioner shall
3 investigate the relevant facts with regard to the applicant
4 and his or her application for a lender's or broker's
5 license, as the case may be. Upon the basis of the applica-
6 tion and all other information before him or her, the
7 commissioner shall make and enter an order denying the
8 application and refusing the license sought if the commis-
9 sioner finds that:

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

12 (2) The applicant, individually, if an individual, or the

13 partners, if a partnership, or the officers and directors, if
14 a corporation, is of such character and reputation as
15 reasonably to warrant the belief that the business will not
16 be operated lawfully and properly in accordance with the
17 provisions of this article;

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

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

24 Otherwise, the commissioner shall issue to the applicant
25 a lender's or broker's license which shall entitle the
26 applicant to engage in the business of lender or broker, as
27 the case may be, during the period, unless sooner sus-
28 pended or revoked, for which the license is issued.

29 (b) Every application for a lender's or broker's license
30 shall be passed upon and the license issued or refused
31 within forty-five days after the applicant therefor has
32 fully complied with the provisions of section four of this
33 article. Under no circumstances whatever shall a person or
34 licensee act as a broker and lender in the same transac-
35 tion. Whenever an application for a lender's or broker's
36 license is denied and the license sought is refused, which
37 refusal has become final, the commissioner shall retain the
38 investigation fee or fees but shall return the license fee to
39 the applicant.

§31-17-9. Disclosure; closing statements; other records required.

1 (a) Any licensee or person making on his own behalf, or
2 as agent, broker or in other representative capacity on
3 behalf of any other person, a secondary mortgage loan,
4 whether lawfully or unlawfully, shall at the time of the
5 closing furnish to the borrower a complete and itemized
6 closing statement which shall show in detail:

7 (1) The amount and date of the note or secondary
8 mortgage loan contract and the date of maturity;

9 (2) The nature of the security;

10 (3) The finance charge rate per annum and the itemized
11 amount of finance charges and additional charges;

12 (4) The amount financed and total of payments;

13 (5) Disposition of the principal;

14 (6) A description of the payment schedule;

15 (7) The terms on which additional advances, if any, will
16 be made;

17 (8) The charge to be imposed for past-due installments;

18 (9) A description and the cost of insurance required by
19 the lender or purchased by the borrower in connection
20 with the secondary mortgage loan;

21 (10) The name and address of the borrower and of the
22 lender; and

23 (11) That the borrower may prepay the secondary
24 mortgage loan in whole or in part on any installment date,
25 and that the borrower will receive a rebate in full for any
26 unearned finance charge.

27 Such detailed closing statement shall be signed by the
28 lender or his representative, and a completed and signed
29 copy thereof shall be retained by the lender and made
30 available at all reasonable times to the borrower, the
31 borrower's successor in interest to the residential prop-
32 erty, or the authorized agent of the borrower or the
33 borrower's successor, until the time as the indebtedness
34 shall be satisfied in full.

35 The commissioner may, from time to time, by rules
36 prescribe additional information to be included in a
37 closing statement.

38 (b) Upon written request from the borrower, the holder
39 of a secondary mortgage loan instrument shall deliver to
40 the borrower, within ten days from and after receipt of the
41 written request, a statement of the borrower's account
42 showing the date and amount of all payments made or
43 credited to the account and the total unpaid balance.
44 Charges for providing an account statement may be
45 assessed only where permitted as set forth by subsection

46 two, section one hundred fourteen, article two, chapter
47 forty-six-a of this code.

48 (c) Upon satisfaction of a secondary mortgage loan
49 obligation in full, the holder of the instrument evidencing
50 or securing the obligation shall comply with the require-
51 ments of section one, article twelve, chapter thirty-eight
52 of this code in the prompt release of the lien which had
53 secured the secondary mortgage loan obligation.

54 (d) Upon written request or authorization from the
55 borrower, the holder of a secondary mortgage loan
56 instrument shall send or otherwise provide to the bor-
57 rower or his or her designee, within two business days
58 after receipt of the written request or authorization, a
59 payoff statement of the borrower's account. Except as
60 provided by this subsection, no charge may be made for
61 providing the payoff statement. Charges for the actual
62 expenses associated with using a third-party courier
63 delivery or expedited mail delivery service may be as-
64 sessed when this type of delivery is requested and autho-
65 rized by the borrower, following disclosure to the bor-
66 rower of its cost. The payoff information shall be provided
67 by mail, telephone, courier, facsimile, or other transmis-
68 sion as requested by the borrower or his or her designee.

**§31-17-11. Records and reports; examination of records; analy-
sis.**

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

14 (b) Each licensee shall file with the commissioner on or

15 before the fifteenth day of March of each year a report
16 under oath or affirmation concerning his or her business
17 and operations in this state for the preceding license year
18 in the form prescribed by the commissioner, which shall
19 show the annual volume and outstanding amounts of
20 secondary mortgage loans, the classification of the second-
21 ary mortgage loans by size and by security, and the gross
22 income from, and expenses properly chargeable to, such
23 secondary mortgage loans.

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

35 (d) The commissioner shall publish annually an analysis
36 of the information furnished in accordance with the
37 provisions of subsection (b) of this section, but the individ-
38 ual reports shall not be public records and shall not be
39 open to public inspection.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.

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

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner shall have supervi-
3 sion and jurisdiction over state banks, regulated consumer
4 lenders, second mortgage lenders and brokers, credit
5 unions, and all other persons now or hereafter made
6 subject to his supervision or jurisdiction. All powers,
7 duties, rights and privileges vested in the department are
8 hereby vested in the commissioner. He shall be the chief
9 executive officer of the department of banking and shall

10 be responsible for the department's organization, services
11 and personnel, and for the orderly and efficient adminis-
12 tration, enforcement and execution of the provisions of
13 this chapter and all laws vesting authority or powers in or
14 prescribing duties or functions for the department or the
15 commissioner.

16 (b) The commissioner shall:

17 (1) Maintain the office for the department at the state
18 capitol, and there keep a complete record of all the depart-
19 ment's transactions, of the financial conditions of all
20 financial institutions and such records of the activities of
21 other persons as the commissioner may deem important.
22 Notwithstanding any other provision of the code of West
23 Virginia, heretofore or hereafter enacted, the records
24 relating to the financial condition of any financial institu-
25 tion and any information contained therein shall be
26 confidential for the use of the commissioner and autho-
27 rized personnel of the department of banking. No person
28 shall divulge any information contained in any such
29 records except as hereafter authorized in response to a
30 valid subpoena or subpoena duces tecum issued pursuant
31 to law in a criminal proceeding or in a civil enforcement
32 action brought by the state or federal regulatory authori-
33 ties. Subpoenas shall first be directed to the commissioner,
34 who shall authorize disclosure of relevant records and
35 information therefrom for good cause, upon imposing
36 terms and conditions as are deemed necessary to protect
37 the confidential nature of the records, the financial
38 integrity of the financial institution or the person to which
39 the records relate, and the legitimate privacy interests of
40 any individual named in such records. Conformity with
41 federal procedures shall be sought where the institution
42 maintains federal deposit insurance. The commissioner
43 shall have and may exercise reasonable discretion as to
44 the time, manner and extent the other records in his office
45 and the information contained therein shall be available
46 for public examination;

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

50 thereunder; and

51 (3) Investigate all alleged violations of this chapter and
52 all other laws which he is required to enforce and of any
53 rule and regulation promulgated or order issued thereun-
54 der.

55 (c) In addition to all other authority and powers vested
56 in the commissioner by provisions of this chapter and
57 other applicable laws, the commissioner is authorized and
58 empowered:

59 (1) To provide for the organization of the department
60 and the procedures and practices thereof and implement
61 the same by the promulgation of rules and regulations and
62 forms as appropriate, which rules and regulations shall be
63 promulgated in accordance with article three, chapter
64 twenty-nine-a of this code;

65 (2) Employ, direct, discipline, discharge and establish
66 qualifications and duties for all personnel for the depart-
67 ment, including, but not limited to, examiners, assistant
68 examiners, conservators and receivers, to establish the
69 amount and condition of bonds for such thereof as he
70 deems appropriate and to pay the premiums thereon, and
71 if he so elects, to have all such personnel subject to and
72 under the classified service of the state personnel depart-
73 ment;

74 (3) To cooperate with organizations, agencies, commit-
75 tees and other representatives of financial institutions of
76 the state in connection with schools, seminars, conferences
77 and other meetings to improve the responsibilities,
78 services and stability of the financial institutions;

79 (4) In addition to the examinations required by section
80 six of this article, to inspect, examine and audit the books,
81 records, accounts and papers of all financial institutions
82 at such times as circumstances in his opinion may war-
83 rant;

84 (5) To call for and require all such data, reports and
85 information from financial institutions under his jurisdic-
86 tion, at such times and in such form, content and detail,
87 deemed necessary by him in the faithful discharge of his

88 duties and responsibilities in the supervision of the
89 financial institutions;

90 (6) Subject to the powers vested in the board by article
91 three of this chapter, to supervise the location, organiza-
92 tion, practices and procedures of financial institutions
93 and, without limitation on the general powers of supervi-
94 sion thereof, to require financial institutions to:

95 (A) Maintain their accounts consistent with such regula-
96 tions as he may prescribe and in accordance with gener-
97 ally accepted accounting practices;

98 (B) Observe methods and standards which he may
99 prescribe for determining the value of various types of
100 assets;

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

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

104 (E) Record or file writings creating or evidencing liens
105 or other interests in property;

106 (F) Obtain financial statements from prospective and
107 existing borrowers;

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

110 (H) Maintain adequate insurance against such other
111 risks as he may deem and determine to be necessary and
112 appropriate for the protection of depositors and the
113 public;

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

116 (J) Take such other action as may in his judgment be
117 required of the institution in order to maintain its stabil-
118 ity, integrity and security as required by law and all rules
119 and regulations promulgated by him; and

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

121 (7) Subject to the powers vested in the board by article
122 three of this chapter, to receive from any person or

123 persons and to consider any request, petition or applica-
124 tion relating to the organization, location, conduct,
125 services, policies and procedures of any financial institu-
126 tion and to act thereupon in accordance with any provi-
127 sions of law applicable thereto;

128 (8) In connection with the investigations required by
129 subdivision (3), subsection (b) of this section, to issue
130 subpoenas and subpoenas duces tecum, administer oaths,
131 examine persons under oath, and hold and conduct
132 hearings, any such subpoenas or subpoenas duces tecum
133 to be issued, served and enforced in the manner provided
134 in section one, article five, chapter twenty-nine-a of this
135 code. Any person appearing and testifying at such a
136 hearing may be accompanied by an attorney employed by
137 him;

138 (9) To issue declaratory rulings in accordance with the
139 provisions of section one, article four, chapter twenty-
140 nine-a of this code;

141 (10) To study and survey the location, size and services
142 of financial institutions, the geographic, industrial,
143 economic and population factors affecting the agricul-
144 tural, commercial and social life of the state, and the
145 needs for reducing, expanding or otherwise modifying the
146 services and facilities of financial institutions in the
147 various parts of the state, and to compile and keep current
148 data thereon to aid and guide him in the administration of
149 the duties of his office;

150 (11) To implement all of the provisions of this chapter
151 (except the provisions of article three) and all other laws
152 which he is empowered to administer and enforce by the
153 promulgation of rules and regulations in accordance with
154 the provisions of article three, chapter twenty-nine-a of
155 this code;

156 (12) To implement the provisions of chapter forty-six-a
157 of this code applicable to consumer loans and consumer
158 credit sales by the promulgation of rules and regulations
159 in accordance with the provisions of article three, chapter
160 twenty-nine-a of this code so long as said rules and
161 regulations do not conflict with any rules and regulations

162 promulgated by the state's attorney general;

163 (13) To foster and encourage a working relationship
164 between the department of banking and financial institu-
165 tions, credit, consumer, mercantile and other commercial
166 and finance groups and interests in the state in order to
167 make current appraisals of the quality, stability and
168 availability of the services and facilities of financial
169 institutions;

170 (14) To provide to financial institutions and the public
171 copies of the West Virginia statutes relating to financial
172 institutions, suggested drafts of bylaws commonly used by
173 financial institutions, and such other forms and printed
174 materials as may be found by him to be helpful to finan-
175 cial institutions, their shareholders, depositors and
176 patrons, and to make reasonable charges therefor;

177 (15) To delegate the powers and duties of his office,
178 other than the powers and duties in this subsection
179 hereinafter excepted, to qualified department personnel,
180 who shall act under the direction and supervision of the
181 commissioner and for whose acts he shall be responsible,
182 but the commissioner may delegate to the deputy commis-
183 sioner of banking and to no other department personnel
184 the following powers, duties and responsibilities, all of
185 which are hereby granted to and vested in the commis-
186 sioner and for all of which the commissioner shall likewise
187 be responsible:

188 (A) To order any person to cease violating any provision
189 or provisions of this chapter or other applicable law or
190 any rule and regulation promulgated or order issued
191 thereunder;

192 (B) To order any person to cease engaging in any un-
193 sound practice or procedure which may detrimentally
194 affect any financial institution or depositor thereof;

195 (C) To revoke the certificate of authority, permit or
196 license of any financial institution except a banking
197 institution in accordance with the provisions of section
198 thirteen of this article; and

199 (D) To accept an assurance in writing that the person

200 will not in the future engage in the conduct alleged by the
201 commissioner to be unlawful, which conduct could be
202 subject to an order under the provisions of this chapter.
203 Such assurance of voluntary compliance shall not be
204 considered an admission of violation for any purpose,
205 except that if a person giving such assurance fails to
206 comply with its terms, the assurance is prima facie
207 evidence that prior to such assurance the person engaged
208 in conduct described in such assurance;

209 (16) To seek and obtain from courts, civil penalties
210 against any person who violates this chapter, the rules
211 issued pursuant thereto, or any orders lawfully entered by
212 the commissioner or board of banking and financial
213 institutions in an amount not less than fifty dollars nor
214 more than five thousand dollars for each violation;

215 (17) To receive from state banking institutions applica-
216 tions to change the locations of their principal offices and
217 to approve or disapprove such applications; and

218 (18) To take such other action as he may deem necessary
219 to enforce and administer the provisions of this chapter
220 (except the provisions of article three) and all other laws
221 which he is empowered to administer and enforce, and to
222 apply to any court of competent jurisdiction for appropri-
223 ate orders, writs, processes and remedies.

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

1 The commissioner of banking shall make, at least once
2 every eighteen months, a thorough examination of all the
3 books, accounts, records and papers of every depository
4 financial institution. He or she shall carefully examine all
5 of the assets of each such institution, including its notes,
6 drafts, checks, mortgages, securities deposited to assure
7 the payment of debts unto it, and all papers, documents
8 and records showing, or in any manner relating to, its
9 business affairs, and shall ascertain the full amount and
10 the nature in detail of all of its assets and liabilities. The

11 commissioner may also, at his or her discretion, make or
12 cause to be made, an annual or periodic examination of
13 the books, accounts, records and papers of other financial
14 institutions under his or her supervision for the purposes
15 of determining compliance with applicable consumer and
16 credit lending laws, and verifying information provided in
17 any license application or annual report submitted to the
18 commissioner. The commissioner may also make such
19 examination of any subsidiaries or affiliates of a financial
20 institution as he or she may deem necessary to ascertain
21 the financial condition of the financial institution, the
22 relations between the financial institution and its subsid-
23 iaries and affiliates and the effect of the relations upon the
24 affairs of such financial institution. A full report of every
25 examination shall be made and filed and preserved in the
26 office of the commissioner and a copy thereof forthwith
27 mailed to the institution examined. Every institution shall
28 retain all of its records of final entry for the period of time
29 as required in section thirty-five, article four of this
30 chapter for banking institutions. Unless otherwise covered
31 by assessments or a specific provision of this code, the cost
32 of examinations made pursuant to this section shall be
33 borne by the financial institution at a rate of fifty dollars
34 per each examiner hour expended.

35 Every official communication from the commissioner to
36 any institution, or to any officer thereof, relating to an
37 examination or an investigation of the affairs of the
38 institution conducted by the commissioner or containing
39 suggestions or recommendations as to the manner of
40 conducting the business of the institution, shall be read by
41 the board of directors at the next meeting after the receipt
42 thereof, and the president, or other executive officer, of
43 the institution shall forthwith notify the commissioner in
44 writing of the presentation and reading of the communica-
45 tion and of any action taken thereon by the institution.

46 The commissioner of banking, in his or her discretion,
47 may: (a) Accept a copy of a reasonably current examina-
48 tion of any banking institution made by the federal
49 deposit insurance corporation or the federal reserve
50 system in lieu of an examination of the banking institution

51 required or authorized to be made by the laws of this
52 state, and the commissioner may furnish to the federal
53 deposit insurance corporation or the federal reserve
54 system or to any official or examiner thereof, any copy or
55 copies of the commissioner's examinations of and reports
56 on the banking institutions; (b) accept a copy of a reason-
57 ably current examination of any out-of-state bank or any
58 West Virginia state bank's out-of-state activities made by
59 another state's banking regulatory authority in lieu of an
60 examination of the banking institution required or
61 authorized to be made by the laws of this state, and the
62 commissioner may furnish to such other state's banking
63 regulatory authority or to any official or examiner thereof,
64 any copy or copies of the commissioner's examinations of
65 and reports on such banking institutions; but nothing
66 herein shall be construed to limit the duty and responsibil-
67 ity of banking institutions to comply with all provisions of
68 law relating to examinations and reports, nor to limit the
69 powers and authority of the commissioner of banking with
70 reference to examinations and reports under existing laws.
71 The provision or exchange of examination reports and
72 other records of financial condition and individuals
73 pursuant to cooperative, coordinating or information-
74 sharing agreements with other bank supervisory agencies
75 and persons as permitted by this chapter under an agree-
76 ment of confidentiality, shall not constitute a violation of
77 section four of this article.

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

1 (a) All moneys collected by the commissioner from
2 financial institutions and bank holding companies for
3 assessments, examination fees, investigation fees or other
4 necessary expenses incurred by the commissioner in
5 administering such duties shall be paid to the commis-
6 sioner and paid by the commissioner to the treasurer of
7 the state to the credit of a special revenue account to be
8 known as the "Commissioner's Assessment and Examina-
9 tion Fund" which is hereby established. The assessments
10 and fees paid into this account shall be appropriated by

11 law and used to pay the costs and expenses of the division
 12 of banking and all incidental costs and expenses necessary
 13 for its operations. At the end of each fiscal year, if the
 14 fund contains a sum of money in excess of twenty percent
 15 of the appropriated budget of the division of banking, the
 16 amount of the excess shall be transferred to the general
 17 revenue fund of the state. The Legislature may appropri-
 18 ate money to start the special revenue account.

19 (b) The commissioner of banking shall charge and collect
 20 from each state banking institution or other financial
 21 institution or bank holding company and pay into a
 22 special revenue account in the state treasury for the
 23 division of banking assessments as follows:

24 (1) For each state banking institution, a semiannual
 25 assessment payable on the first day of January and the
 26 first day of July, each year, computed upon the total assets
 27 of the banking institution shown on the report of condi-
 28 tion of the banking institution filed as of the preceding
 29 thirtieth day of June and the thirty-first day of December,
 30 respectively, as follows:

31	Total Assets				32
32	Over	But Not	This	Plus	Of Excess
33	Million	Over	Amount		Over
34		Million			Million
35	\$ 0	\$ 2	\$ 0	.001645020	0
36	2	20	3,290	.000205628	2
37	20	100	6,991	.000164502	20
38	100	200	20,151	.000106926	100
39	200	1,000	30,844	.000090476	200
40	1,000	2,000	103,225	.000074026	1,000
41	2,000	6,000	177,251	.000065801	2,000
42	6,000	20,000	440,454	.000055988	6,000
43	20,000	40,000	1,224,292	.000052670	20,000

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

51 as follows:

52	Total Outstanding Balances				
53		But Not	This		Of Excess
54	Over	Over	Amount	Plus	Over
55	\$ 0	\$1,000,000	\$ 800	-	-
56	1,000,000	5,000,000	800	.000400	1,000,000
57	5,000,000	10,000,000	2,400	.000200	5,000,000
58	10,000,000	-	4,200	.000100	10,000,000

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

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

66	Total Assets				
67		But Not	This		Of Excess
68	Over	Over	Amount	Plus	Over
69	\$ 0	\$100,000	100	-	-
70	100,000	500,000	300	-	-
71	500,000	1,000,000	500	-	-
72	1,000,000	5,000,000	500	.000400	1,000,000
73	5,000,000	10,000,000	2,100	.000200	5,000,000
74	10,000,000	-	3,100	.000100	10,000,000

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

80 (c) The commissioner shall each December and each
81 June prepare and send to each state banking institution a
82 statement of the amount of the assessment due. The
83 commissioner shall, further, each June, prepare and send
84 to each regulated consumer lender and each state credit
85 union a statement of the amount of the assessment due.
86 The commissioner shall, annually, during the month of
87 January, prepare and send to each bank holding company
88 a statement of the amount of the assessment due.

89 Assessments shall be prescribed annually, not later than

90 the fifteenth day of June, by written order of the commis-
91 sioner, but shall not exceed the maximums as set forth in
92 subsection (b) of this section. In setting the assessments
93 the primary consideration shall be the amount appropri-
94 ated by the Legislature for the division of banking for the
95 corresponding annual period. Reasonable notice of the
96 assessments shall be made to all interested parties. All
97 orders of the commissioner for the purpose of setting
98 assessments are not subject to the provisions of the West
99 Virginia administrative procedures act, under chapter
100 twenty-nine-a of this code.

101 (d) For making an examination within the state of any
102 other financial institution for which assessments are not
103 provided by this code, the commissioner of banking shall
104 charge and collect from such other financial institution
105 and pay into the special revenue account for the division
106 of banking the actual and necessary costs and expenses
107 incurred in connection therewith, as fixed and determined
108 by the commissioner.

109 (e) If the records of an institution are located outside
110 this state, the institution at its option shall make them
111 available to the commissioner at a convenient location
112 within the state, or pay the reasonable and necessary
113 expenses for the commissioner or his or her representa-
114 tives to examine them at the place where they are main-
115 tained. The commissioner may designate representatives,
116 including comparable officials of the state in which the
117 records are located, to inspect them on his or her behalf.

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

1 (a) Subject to the provisions of subsections (e), (f), (g)
2 and (h) of this section and to the provisions of subsection
3 (j), section twelve, article eight of this chapter, notice and
4 hearing shall be provided in advance of the entry of any
5 order by the board.

6 (1) Such notice shall be given to the financial institution
7 or person with respect to whom the hearing is to be
8 conducted in accordance with the provisions of section
9 two, article seven, chapter twenty-nine-a of this code, and
10 such hearing and the administrative procedures in connec-
11 tion therewith shall be governed by all of the provisions of
12 article five, chapter twenty-nine-a of this code, and shall
13 be held at a time and place set by the board, but shall not
14 be held less than ten or more than thirty days after such
15 notice is given. A hearing may be continued by the board
16 on its own motion or for good cause shown.

17 (2) At any such hearing a party may represent himself or
18 be represented by an attorney at law admitted to practice
19 before any circuit court of this state.

20 (b) After any such hearing and consideration of all of the
21 testimony and evidence, the board shall make and enter an
22 order deciding the matters with respect to which such
23 hearing was conducted, which order shall be accompanied
24 by findings of fact and conclusions of law as specified in
25 section three, article five, chapter twenty-nine-a of this
26 code, and a copy of such order and accompanying findings
27 and conclusions shall be served upon all parties to such
28 hearing, and their attorneys of record, if any.

29 (c) In the case of an application for the board's approval
30 to incorporate and organize a banking institution in this
31 state, as provided in subdivision (3), subsection (b), section
32 two of this article, the board shall, upon receipt of any
33 such application, provide notice to all banking institu-
34 tions, which in the manner hereinafter provided, have
35 requested notice of any such action. The request by any
36 such banking institution to receive such notice shall be in
37 writing and shall request the board to notify it of the
38 receipt by the board of any application to incorporate and
39 organize a banking institution in this state. A banking
40 institution may, within ten days after receipt of such
41 notice, file a petition to intervene and shall, if it so files
42 such petition, thereupon become a party to any hearing
43 relating thereto before the board.

44 (d) The board shall have the power and authority to

45 issue subpoenas and subpoenas duces tecum, administer
46 oaths and examine any person under oath in connection
47 with any subject relating to duties imposed upon or
48 powers vested in the board.

49 (e) Whenever the board shall find that extraordinary
50 circumstances exist which require immediate action, it
51 may forthwith without notice or hearing enter an order
52 taking any action permitted by subdivisions (1), (2), (4)
53 and (5), subsection (b), section two of this article. Immedi-
54 ately upon the entry of such order, certified copies thereof
55 shall be served upon all persons affected thereby and upon
56 demand such persons shall be entitled to a hearing thereon
57 at the earliest practicable time.

58 (f) Whenever the board shall find that the financial
59 condition of a state banking institution or a national
60 banking association constitutes an imminent peril to its
61 depositors, savings account holders, other customers or
62 creditors, it may forthwith without notice or hearing enter
63 an order taking any action permitted by subdivisions (7)
64 and (8), subsection (b), section two of this article. Immedi-
65 ately upon entry of such order, certified copies thereof
66 shall be served upon all persons affected thereby and upon
67 demand such persons shall be entitled to a hearing thereon
68 at the earliest practicable time.

69 (g) Whenever the board shall find that the financial
70 condition of a state banking institution or national
71 banking association constitutes an imminent peril to its
72 depositors, savings account holders, other customers or
73 creditors, it may forthwith without compliance with the
74 provisions of section six or seven, article four of this
75 chapter and without notice or hearing enter an order
76 approving or disapproving an application to incorporate
77 a state banking institution which is being formed to
78 purchase the business and assets or assume the liabilities
79 of, or both, or merge or consolidate with, such state
80 banking institution or national banking institution the
81 financial condition of which constitutes an imminent peril
82 to its depositors, savings account holders, other customers
83 or creditors. Immediately upon the entry of such order,
84 certified copies thereof shall be served upon all persons

85 affected thereby and upon demand such persons shall be
86 entitled to a hearing thereon at the earliest practicable
87 time.

88 (h) Whenever the board shall find that the financial
89 condition of a state banking institution, national associa-
90 tion or bank holding company constitutes an imminent
91 peril to its depositors, savings account holders, other
92 customers or creditors, it may forthwith without compli-
93 ance with the provisions of section five or six, article
94 eight-a of this chapter and without notice of hearing enter
95 an order approving or disapproving an application by an
96 existing bank holding company or by an organizing bank
97 holding company to acquire in whole or in part, directly or
98 indirectly, such state banking institution, national associa-
99 tion or bank holding company. Immediately upon the
100 entry of such order, certified copies thereof shall be served
101 upon all persons affected thereby at the earliest practica-
102 ble time.

103 (i) Definitions:

104 (1) The term "imminent peril" means that, because the
105 banking institution or bank holding company is insolvent
106 or about to be insolvent, or there is a probability that the
107 banking institution will not be able to pay its debts when
108 they become due.

109 (2) A banking institution or bank holding company is
110 "about to be insolvent" when it would be unable to meet
111 the demands of its depositors or is clearly unable, without
112 impairment of capital, by sale of assets or lawful
113 borrowings or otherwise, to realize sufficient liquid assets
114 to pay such debts for which payment is likely, in the
115 immediate future, to be due and demanded in the ordinary
116 course of business.

117 (3) A banking institution or bank holding company is
118 "insolvent" when it is unable to pay its debts to its
119 depositors and other creditors in the ordinary and usual
120 course of business.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-9. Fidelity bonds and insurance.

1 (a) The directors of a state bank shall direct and require
2 good and sufficient fidelity bonds on all active officers
3 and employees, whether or not they draw salary or
4 compensation, which bonds shall provide for indemnity to
5 such bank on account of any losses sustained by it as the
6 result of any dishonest, fraudulent or criminal act or
7 omission committed or omitted by them acting independ-
8 ently or in collusion or combination with any person or
9 persons. Such bonds may be in individual, schedule or
10 blanket form, and the premiums therefor shall be paid by
11 the bank.

12 (b) The directors shall also direct and require suitable
13 insurance protection to the bank against burglary, rob-
14 bery, theft and other similar insurable hazards to which
15 the bank may be exposed in the operations of its business
16 on the premises or elsewhere.

17 (c) The directors shall be responsible for prescribing at
18 least once in each year the amount or penal sum of such
19 bonds or policies and the sureties or underwriters thereon,
20 after giving due and careful consideration to all known
21 elements and factors constituting such risk or hazard.
22 Such action shall be recorded in the minutes of the board
23 of directors.

24 (d) A state bank which is a subsidiary of a bank holding
25 company as defined in section one, article eight-a of this
26 chapter may fulfill the requirements of subsections (a) and
27 (b) of this section if such fidelity bonds and insurance
28 protection are obtained on its behalf by the bank holding
29 company: *Provided*, That the evidence of the existence of
30 such bonds and insurance protection for the state bank
31 must be maintained at the main office of the state bank
32 and the directors of the state bank shall be responsible for
33 reviewing the adequacy of such bonds and insurance
34 protection annually and for recording such review in the
35 minutes of the board.

§31A-4-14. Trust powers of banking institutions.

1 (a) Every state banking institution which files the
2 reports required in section fifteen of this article and which
3 is not otherwise prohibited by the commissioner or federal

4 bank regulators from doing so, shall have and exercise the
5 following powers:

6 (1) All the powers, rights and privileges of any state
7 banking institution;

8 (2) To act as trustee, assignee, special commissioner,
9 general or special receiver, guardian, executor, adminis-
10 trator, committee, agent, curator or in any other fiduciary
11 capacity, and to take, assume, accept and execute trusts of
12 every description not inconsistent with the constitution
13 and laws of the United States of America or of this state;
14 and to receive, hold, manage and apply any sinking fund
15 on the terms and for the purposes specified in the instru-
16 ment creating such fund;

17 (3) To act as registrar, transfer agent or dividend or
18 coupon paying agent for any corporation;

19 (4) To make, hold and dispose of investments and
20 establish common trust funds, and account therefor,
21 pursuant to the provisions of chapter forty-four of this
22 code;

23 (5) To purchase and sell and take charge of and receive
24 the rents, issues and profits of any real estate for other
25 persons or corporations;

26 (6) To act as trustee or agent in any collateral trust and
27 in order to secure the payment of any obligations of any
28 person, firm, private corporation, public corporation,
29 public body or public agency to receive and hold in trust
30 any items of personal property (including, without limita-
31 tion, notes, bonds, debentures, obligations and certificates
32 for shares of stock) with the right in case of default to sell
33 and dispose of such personal property and to collect, settle
34 and adjust any obligations for the payment of money, and
35 at any sale of such personal property held by it, to pur-
36 chase the same for the benefit of all or any of the holders
37 of the obligations, to secure the payment of which such
38 items of personal property were pledged and delivered to
39 the trustee or agent. Any such sale may be made without
40 any proceedings in any court, and at such times and upon
41 such terms as may be specified in the instrument or

42 instruments creating the trust, or, in the absence of any
43 specification of terms, at such time and upon such terms
44 as the trustee shall deem reasonable; and

45 (7) To do and perform any act or thing requisite or
46 necessary in, or incidental to, the exercise of the general
47 powers herein set forth.

48 (b) All national banks having their main office in this
49 state which have been, or hereafter may be, authorized
50 under the laws of the United States to act as trustee and
51 in other fiduciary capacities in the state of West Virginia
52 shall have all the rights, powers, privileges and immuni-
53 ties conferred hereunder, provided they comply with the
54 requirements hereof.

55 (c) Banks having their main office in another state which
56 lawfully have a branch in this state pursuant to the
57 provisions of federal law or articles eight-d or eight-e of
58 this chapter which have been, or hereafter may be, autho-
59 rized under the laws of the United States or the laws of
60 the state in which such bank is chartered to act as trustee
61 and in other fiduciary capacities in the state in which
62 their main office is located shall have all the rights,
63 powers, privileges and immunities conferred hereunder,
64 provided they comply with the requirements hereof.

**§31A-4-14a. Transfer of fiduciary accounts or relationships
between affiliated subsidiary banks of a bank
holding company.**

1 (a) Notwithstanding any other provision of this code,
2 and unless the will, deed or other instrument creating a
3 trust or fiduciary account or relationship specifically
4 provides otherwise, any affiliate subsidiary which is
5 empowered with and authorized to exercise trust powers,
6 or otherwise performs fiduciary services for a fee, may,
7 without any order or other action on the part of any court
8 or otherwise, transfer to any other affiliate subsidiary
9 exercising or authorized to exercise trust powers any or all
10 rights, franchises and interests in its fiduciary accounts or
11 relationships, including, but not limited to, any or all
12 appointments, designations and nominations and any
13 other rights, franchises and interests, as trustee, executor,

14 administrator, guardian, committee, escrow agent, trans-
15 fer and paying agent of stocks and bonds and every other
16 fiduciary capacity; and the transferee or receiving affiliate
17 subsidiary shall hold and enjoy all rights of property,
18 franchises and interests in the same manner and to the
19 same extent as such rights, franchises and interests were
20 held or enjoyed by the transferor affiliate subsidiary. As
21 to transfers to an affiliate subsidiary pursuant to this
22 section, the receiving affiliate subsidiary shall take,
23 receive, accept, hold, administer and discharge any grants,
24 gifts, bequests, devises, conveyances, trusts, powers and
25 appointments made by deed, deed of trust, will, agree-
26 ment, order of court or otherwise to, in favor of, or in the
27 name of, the transferor affiliate subsidiary, whether made,
28 executed or entered before or after such transfer and
29 whether to vest or become effective before or after such
30 transfer, as fully and to the same effect as if the receiving
31 affiliate subsidiary had been named and in such deed,
32 deed of trust, will, agreement, order or other instrument
33 instead of such transferor affiliate subsidiary. All acts
34 taken or performed in its own name or in the name of or
35 on behalf of the transferor affiliate subsidiary by any
36 receiving affiliate subsidiary as trustee, agent, executor,
37 administrator, guardian, depository, registrar, transfer
38 agent or other fiduciary with respect to fiduciary accounts
39 or relationships transferred pursuant to this section are as
40 good, valid and effective as if made by the transferor
41 affiliate subsidiary.

42 (b) For purposes of this section, the term "affiliate
43 subsidiary" means any two or more subsidiaries (as the
44 term "subsidiary" is defined in section one, article eight-a
45 of this chapter) which are "banks" or "banking institu-
46 tions" (as those terms are defined in section two, article
47 one of this chapter) and which have a common bank
48 holding company as their parent company. For purposes
49 of this section, the term "bank holding company" shall
50 have the meaning set forth in section one, article eight-a
51 of this chapter.

52 (c) At least thirty days before any transfer authorized by
53 this section, the transferor affiliate subsidiary shall send

54 a statement of intent to transfer together with the name
55 and address of the transferee or receiving affiliated
56 subsidiary by regular United States mail to the most
57 recent known address of all persons who appear in the
58 records of the transferor affiliate subsidiary as having a
59 vested present interest in the trust, fiduciary account or
60 relationship to be transferred.

61 (d) This section shall be applicable to both domestic and
62 foreign bank holding company affiliate subsidiaries.

**§31A-4-15. Certificate showing unimpaired capital to be filed
before exercising trust powers; penalties; notice
of failure to comply.**

1 No banking institution shall exercise any of the trust
2 powers mentioned in this article until it shall have filed
3 with the commissioner of banking an annual report of
4 trust assets each calendar year as filed with federal
5 regulators. If any such banking institution shall exercise,
6 or attempt to exercise, any such powers or rights without
7 having complied with the requirements of this section as
8 to the filing of such report, it shall be guilty of a misde-
9 meanor and, upon conviction thereof, shall be fined not
10 more than five hundred dollars; and in every such case,
11 whether or not there shall have been a prosecution or
12 conviction of the company so offending, the commissioner
13 of banking, being satisfied of the facts, may publish a
14 notice of the fact that it has failed to comply with the
15 requirements of this section and is therefore not entitled
16 to exercise the trust powers and rights mentioned in the
17 preceding section. In the event a notice is published as
18 aforesaid, it shall be published as a Class II legal adver-
19 tisement in compliance with the provisions of article
20 three, chapter fifty-nine of this code, and the publication
21 area for such publication shall be the county in which
22 such institution is located.

**§31A-4-30. Charges and interest allowed in certain cases;
negotiability of installment notes.**

1 In addition to the interest rate provided in article six,
2 chapter forty-seven of this code and elsewhere by law, a
3 banking institution may charge interest together with

4 other finance charges at a rate of eighteen percent per
5 annum or less calculated according to the actuarial
6 method, or one and one-half percent per month, computed
7 on unpaid balances. Additional charges in connection
8 with consumer loans are limited as provided in section one
9 hundred nine, article three, chapter forty-six-a of this
10 code. Loans may be made on a precomputed basis:
11 *Provided*, That upon prepayment in full of a precomputed
12 loan, the bank shall rebate the unearned portion of such
13 finance charges as specified in section five-d, article six,
14 chapter forty-seven of this code. Any note evidencing any
15 such installment loan may provide that the entire unpaid
16 balance thereof at the option of the holder shall become
17 due and payable upon default in the payment of any
18 stipulated installment without impairing the negotiability
19 of such note if otherwise negotiable.

**§31A-4-30a. Alternative maximum interest rate on loans by
banks chartered under state law.**

- 1 (a) The Legislature hereby finds and declares that:
- 2 (1) Under federal banking laws, national banking
3 associations are permitted to charge interest on loans at a
4 rate not exceeding one percent in excess of the discount
5 rate on ninety-day commercial paper in effect at the
6 federal reserve bank in the federal reserve district where
7 the national banking association is located;
- 8 (2) Banks chartered under the laws of West Virginia
9 should be able to charge interest on a comparable basis,
10 and hence avoid being placed at a competitive disadvan-
11 tage in relation to national banking associations having
12 their principal offices in the state;
- 13 (3) It is in the best interest of the citizens of this state to
14 preserve the state banking system and to that end, and in
15 order to foster equitable competition as to interest rates,
16 to provide a means by which banks chartered under the
17 laws of West Virginia, as an alternative, to the interest
18 rates authorized by any other provisions of this code, may
19 charge interest at a rate comparable to the rate permitted
20 to national banking associations; Therefore,

21 (4) As an alternative to the interest rate authorized by
22 any other provisions of this code, any bank now or hereaf-
23 ter chartered under the laws of West Virginia may, after
24 the effective date of this section, on any loan of money,
25 contract in writing for the payment of interest at a rate,
26 including points expressed as a percentage of the loan
27 divided by the number of years of the loan contract, not to
28 exceed one percent in excess of the discount rate on
29 ninety-day commercial paper in effect at the federal
30 reserve bank in the federal reserve district where the state
31 bank is located.

32 (b) For the purpose of subsection (a) of this section, the
33 term "points" is defined as the amount of money, or other
34 consideration, received by any person or by such banks,
35 from whatever source, as a consideration for making the
36 loan and not otherwise expressly permitted by statute.

37 (c) A commitment to make a loan pursuant to this
38 section which provides for consummation within some
39 future time may be consummated pursuant to the provi-
40 sions, including interest rate, of such commitment not-
41 withstanding the fact that the maximum rate of interest at
42 the time the loan contract is entered into is less than a
43 commitment rate of interest: *Provided*, That the commit-
44 ment rate of interest does not exceed the maximum
45 interest rate in effect on the date the commitment was
46 issued: *Provided, however*, That the commitment when
47 agreed to by the borrower constitutes a legally binding
48 obligation on the part of such person or such bank to
49 make such a loan within a specified time period in the
50 future at a rate of interest not exceeding the maximum
51 rate of interest effective as of the date of commitment, and
52 the commitment does not include any condition for
53 increase of the interest rate at the time of loan consumma-
54 tion even though the maximum rate of interest is then
55 higher.

56 (d) Nothing contained in this section shall prohibit the
57 parties to any loan transaction from contracting for a rate
58 of interest authorized by any other provision of this code.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

1 (a) No banking institution shall engage in business in
2 this state at any place other than at its principal office in
3 this state, at a branch bank in this state, at a customer
4 bank communication terminal permitted by section
5 twelve-b of this article or at any loan origination office
6 permitted by section twelve-c of this article:

7 (1) Acceptance of a deposit or allowing a withdrawal at
8 the banking offices of any subsidiary affiliate, as defined
9 in section one, article eight-a of this chapter, for credit or
10 debit to the customer's account at any other subsidiary of
11 the same bank holding company is permissible and does
12 not constitute branch banking. In addition, the conduct of
13 activity at branch offices as an agent for any bank subsid-
14 iary of the same bank holding company shall be permitted
15 to the same extent allowed by federal law for national
16 banks pursuant to 12 U.S.C. §1828, and does not consti-
17 tute branch banking; nor shall such activity constitute a
18 violation of section forty-two, article four of this chapter:
19 *Provided*, That no banking institution may utilize that
20 agency relationship to evade state consumer protection
21 laws, including usury laws, or any other applicable laws
22 of this state, or to conduct any activity that is not
23 financially-related, as that term is defined by section two,
24 article eight-c of this chapter;

25 (2) A banking institution located in a county where there
26 is also a higher educational institution as defined in
27 section two, article one, chapter eighteen-b of this code,
28 may establish a temporary business office on the campus
29 of any such educational institution located in such county
30 for the limited purposes of opening accounts and accept-
31 ing deposits for a period not in excess of four business
32 days per semester, trimester or quarter: *Provided*, That
33 prior to opening any temporary office, a banking institu-
34 tion must first obtain written permission from the institu-
35 tion of higher education. The term "business days", for the

36 purpose of this subsection, means days exclusive of
37 Saturdays, Sundays and legal holidays as defined in
38 section one, article two, chapter two of this code;

39 (3) Any banking institution which on the first day of
40 January, one thousand nine hundred eighty-four, was
41 authorized to operate an off-premises walk-in or drive-in
42 facility, pursuant to the law then in effect, may, as of the
43 seventh day of June, one thousand nine hundred eighty-
44 four, operate such facility as a branch bank and it shall
45 not be necessary, for the continued operation of such
46 branch bank, to obtain additional approvals, notwith-
47 standing the provisions of subsection (d) of this section
48 and subdivision (6), subsection (b), section two, article
49 three of this chapter.

50 (b) Except for a bank holding company, it shall be
51 unlawful for any individual, partnership, society, associa-
52 tion, firm, institution, trust, syndicate, public or private
53 corporation, or any other legal entity, or combination of
54 entities acting in concert, to directly or indirectly own,
55 control or hold with power to vote, twenty-five percent or
56 more of the voting shares of each of two or more banks, or
57 to control in any manner the election of a majority of the
58 directors of two or more banks.

59 (c) A banking institution may establish branch banks
60 either by:

61 (1) The construction, lease or acquisition of branch bank
62 facilities within any county of this state; or

63 (2) The purchase of the business and assets and assump-
64 tion of the liabilities of, or merger or consolidation with,
65 another banking institution.

66 (d) Notwithstanding any other provision of this chapter
67 to the contrary, subject to and in furtherance of the
68 board's authority under the provisions of subdivision (6),
69 subsection (b), section two, article three of this chapter,
70 and subsection (g) of this section, the board may approve
71 or disapprove the application of any state banking institu-
72 tion to establish a branch bank.

73 (e) The main office or a branch of a West Virginia state

74 banking institution may not be relocated without the
75 approval by order of the commissioner.

76 (f) Any banking institution which is authorized to
77 establish branch banks pursuant to this section may
78 provide the same banking services and exercise the same
79 powers at each such branch bank as may be provided and
80 exercised at its principal banking house.

81 (g) The board shall, upon receipt of any application to
82 establish a branch bank, provide notice of such applica-
83 tion to all banking institutions. A banking institution may,
84 within ten days after receipt of such notice, file a petition
85 to intervene and shall, if it so files such petition, there-
86 upon become a party to any hearing relating thereto
87 before the board.

88 (h) The commissioner shall prescribe the form of the
89 application for a branch bank and shall collect an exami-
90 nation and investigation fee of one thousand dollars for
91 each filed application for a branch bank that is to be
92 established by the construction, lease or acquisition of a
93 branch bank facility, and two thousand five hundred
94 dollars for a branch bank that is to be established by the
95 purchase of the business and assets and assumption of the
96 liabilities of, or merger or consolidation with another
97 banking institution. Notwithstanding the above, if the
98 merger or consolidation is between an existing banking
99 institution and a bank newly incorporated solely for the
100 purpose of facilitating the acquisition of the existing
101 banking institution, the commissioner shall collect an
102 examination and investigation fee of five hundred dollars.
103 The board shall complete the examination and investiga-
104 tion within ninety days from the date on which such
105 application and fee are received, unless the board requests
106 in writing additional information and disclosures concern-
107 ing the proposed branch bank from the applicant banking
108 institution, in which event such ninety-day period shall be
109 extended for an additional period of thirty days plus the
110 number of days between the date of such request and the
111 date such additional information and disclosures are
112 received.

113 (i) Upon completion of the examination and investiga-
114 tion with respect to such application, the board shall, if a
115 hearing be required pursuant to subsection (j) of this
116 section, forthwith give notice and hold a hearing pursuant
117 to the following provisions:

118 (1) Notice of such hearing shall be given to the banking
119 institution with respect to which the hearing is to be
120 conducted in accordance with the provisions of section
121 two, article seven, chapter twenty-nine-a of this code, and
122 such hearing and the administrative procedures in connec-
123 tion therewith shall be governed by all of the provisions of
124 article five, chapter twenty-nine-a of this code, and shall
125 be held at a time and place set by the board but shall not
126 be less than ten nor more than thirty days after such
127 notice is given;

128 (2) At any such hearing a party may represent himself or
129 be represented by an attorney at law admitted to practice
130 before any circuit court of this state;

131 (3) After such hearing and consideration of all the
132 testimony and evidence, the board shall make and enter an
133 order approving or disapproving the application, which
134 order shall be accompanied by findings of fact and
135 conclusions of law as specified in section three, article
136 five, chapter twenty-nine-a of this code, and a copy of
137 such order and accompanying findings and conclusions
138 shall be served upon all parties to such hearing, and their
139 attorneys of record, if any.

140 (j) No state banking institution may establish a branch
141 bank until the board, following an examination, investiga-
142 tion, notice and hearing, enters an order approving an
143 application for that branch bank: *Provided*, That no such
144 hearing shall be required with respect to any application
145 to establish a branch bank which is approved by the board
146 unless a banking institution has timely filed a petition to
147 intervene pursuant to subsection (g) of this section. The
148 order shall be accompanied by findings of fact that:

149 (1) Public convenience and advantage will be promoted
150 by the establishment of the proposed branch bank;

151 (2) Local conditions assure reasonable promise of
152 successful operation of the proposed branch bank and of
153 those banks and branches thereof already established in
154 the community;

155 (3) Suitable physical facilities will be provided for the
156 branch bank;

157 (4) The applicant state-chartered banking institution
158 satisfies such reasonable and appropriate requirements as
159 to sound financial condition as the commissioner or board
160 may from time to time establish by regulation;

161 (5) The establishment of the proposed branch bank
162 would not result in a monopoly, nor be in furtherance of
163 any combination or conspiracy to monopolize the business
164 of banking in any section of this state; and

165 (6) The establishment of the proposed branch bank
166 would not have the effect in any section of the state of
167 substantially lessening competition, nor tend to create a
168 monopoly or in any other manner be in restraint of trade,
169 unless the anticompetitive effects of the establishment of
170 that proposed branch bank are clearly outweighed in the
171 public interest by the probable effect of the establishment
172 of the proposed branch bank in meeting the convenience
173 and needs of the community to be served by that proposed
174 branch bank. If the branch results from the merger or
175 acquisition of banking institutions, the findings of fact
176 required in subdivisions (1) through (3) of this subsection
177 may be based on the performance and suitability of the
178 previous banking offices.

179 (k) Any party who is adversely affected by the order of
180 the board shall be entitled to judicial review thereof in the
181 manner provided in section four, article five, chapter
182 twenty-nine-a of this code. Any such party adversely
183 affected by a final judgment of a circuit court following
184 judicial review as provided in the foregoing sentence may
185 seek review thereof by appeal to the supreme court of
186 appeals in the manner provided in article six, chapter
187 twenty-nine-a of this code.

188 (l) Pursuant to the resolution of its board of directors

189 and with the prior written approval of the commissioner,
 190 a state banking institution may discontinue the operation
 191 of a branch bank upon at least thirty days prior public
 192 notice given in such form and manner as the commissioner
 193 prescribes.

194 (m) Any violation of any provision of this section shall
 195 constitute a misdemeanor offense punishable by applica-
 196 ble penalties as provided in section fifteen of this article.

**§31A-8-12a. Banking from mobile units prohibited; prohibition
 not to include messenger services; limitation of
 messenger services.**

1 It is illegal for any banking institution or other deposi-
 2 tory institution to conduct its business in a facility that is
 3 a mobile unit not permanently attached to the real estate
 4 upon which it is located, except that such mobile units
 5 may be used as temporary banking quarters pending
 6 construction of a permanent bank building on the same or
 7 adjacent property thereto if a charter for said bank has
 8 previously been approved. This section shall not be
 9 construed or interpreted to prohibit a financial institution
 10 from providing messenger services to its customers by
 11 which items are received by mail, armored car service or
 12 other courier or delivery service for subsequent deposit:
 13 *Provided*, That all such messenger services are confined to
 14 the territorial boundaries of the county in which an office
 15 of such financial institution is located or within fifty miles
 16 of an office of such financial institution.

**§31A-8-12b. Installation and operation of customer bank
 communication terminals permitted.**

1 (a) Any banking institution as defined in section two,
 2 article one of this chapter, individually or jointly with one
 3 or more other banking institutions or other federally
 4 insured financial institutions having their principal offices
 5 in this state, or any combination thereof, may upon ten
 6 days prior written notice filed with the commissioner,
 7 install, operate and engage in banking business by means
 8 of one or more customer bank communication terminals.
 9 Any banking institution which installs and operates a
 10 customer bank communication terminal:

11 (1) Shall make such customer bank communication
12 terminal available for use by other banking institutions;
13 and

14 (2) May make such customer bank communication
15 terminal available for use by other federally insured
16 financial institutions, all in accordance with regulations
17 promulgated by the commissioner. Such customer bank
18 communication terminals shall not be considered to be
19 branch banks or branch offices, agencies or places of
20 business or off-premises walk-in or drive-in banking
21 facilities; nor shall the operation of such customer bank
22 communication terminals to communicate with and
23 permit financial transactions to be carried out through a
24 nonexclusive access interchange system be considered to
25 make any banking institution which is part of such a
26 nonexclusive access interchange system to have illegal
27 branch banks or branch offices, agencies or places of
28 business or off-premises walk-in or drive-in banking
29 facilities.

30 (b) Notwithstanding the provisions of subdivision (1),
31 subsection (a) of this section, a customer bank communi-
32 cation terminal located on the premises of the principal
33 office or branch bank of a banking institution or on the
34 premises of an authorized off-premises facility need not be
35 made available for use by any other banking institution or
36 its customers.

37 (c) For purposes of this section, "customer bank commu-
38 nication terminal" means any electronic device or machine
39 owned, leased, or operated by a bank, together with all
40 associated equipment, structures and systems, including,
41 without limitation, point of sale terminals, through or by
42 means of which a customer and a banking institution may
43 engage in any banking transactions, whether transmitted
44 to the banking institution instantaneously or otherwise,
45 including, without limitation, the receipt of deposits of
46 every kind, the receipt and dispensing of cash, requests to
47 withdraw money from an account or pursuant to a previ-
48 ously authorized line of credit, receiving payments
49 payable at the bank or otherwise transmitting instructions
50 to receive, transfer or pay funds for a customer's benefit.

51 Personal computers, telephones and associated equipment
52 which enable a bank customer to conduct banking trans-
53 actions at their home or office through links to their
54 bank's computer or telephone network, do not constitute
55 a "customer bank communication terminal" under this
56 section. All transactions initiated through a customer
57 bank communication terminal shall be subject to verifica-
58 tion by the banking institution.

59 (d) No person, other than: (1) A banking institution
60 authorized to engage in the banking business in this state;
61 or (2) a credit union authorized to conduct business in this
62 state, may operate any automatic teller machine ("ATM")
63 or automatic loan machine ("ALM") located in this state:
64 *Provided*, That ATM terminals of out-of-state state banks
65 not having branches in this state shall be allowed to
66 operate to the same extent as a West Virginia bank if a
67 national bank from that state not having branches in West
68 Virginia could do so through a federal preemption of state
69 law.

70 (e) For the purposes of this section, "point of sale
71 terminal" means a customer bank communication termi-
72 nal used for the primary purpose of either transferring
73 funds to or from one or more deposit accounts in a bank-
74 ing institution or segregating funds in one or more deposit
75 accounts in a banking institution for future transfer, or
76 both, in order to execute transactions between a person
77 and his customers incident to sales, including, without
78 limitation, devices and machines which may be used to
79 implement and facilitate check guaranty and check
80 authorization programs.

81 (f) Nothing in this section prevents point of sale termi-
82 nals and associated equipment from being owned, leased
83 or operated by nonbanking entities: *Provided*, That such
84 persons may not engage in the business of banking by
85 using point of sale devices. The use of a point of sale
86 terminal to enable a customer or other person to withdraw
87 and obtain cash of more than fifty dollars in excess of the
88 sales transaction purchase amount, will be presumed to
89 constitute engaging in the business of banking.

90 (g) Except for customer bank communication terminals
91 located on the premises of the principal office or a branch
92 bank of the banking institution or on the premises of an
93 authorized off-premises walk-in or drive-in banking
94 facility, a customer bank communication terminal shall be
95 unattended or attended by persons not employed by any
96 banking institution utilizing the terminal: *Provided*, That:

97 (1) Employees of the banking institution may be present
98 at such terminal not located on the premises of an autho-
99 rized off-premises facility solely for the purposes of
100 installing, maintaining, repairing and servicing same; and

101 (2) A banking institution may provide an employee to
102 instruct and assist customers in the operation thereof:
103 *Provided*, That such employee shall not engage in any
104 other banking activity.

105 (h) The commissioner shall prescribe by regulation the
106 procedures and standards regarding the installation and
107 operation of customer bank communication terminals,
108 including, without limitation, the procedure for the
109 sharing thereof.

CHAPTER 31C. CREDIT UNIONS.

ARTICLE 1. SUPERVISION AND REGULATION.

§31C-1-5. Examinations.

1 (a) The commissioner shall examine, or cause to be
2 examined, each credit union at least once every eighteen
3 months. A credit union and any of its officers and agents
4 shall be required to give the commissioner, or the commis-
5 sioner's representatives, full access to all books, papers,
6 securities, records and other sources of information under
7 their control.

8 (b) A report of such examination shall be forwarded to
9 the credit union's board of directors within thirty days
10 after completion. Said report shall contain comments
11 relative to the management of the affairs of the credit
12 union and the general condition of its assets. Within thirty
13 days after the receipt of such report, the directors and
14 committee members shall meet to consider matters
15 contained in the report. Every official communication

16 from the commissioner to any such institution, or to any
 17 officer thereof, relating to an examination or an investiga-
 18 tion of the affairs of such institution conducted by the
 19 commissioner or containing suggestions or recommenda-
 20 tions as to the manner of conducting the business of the
 21 institution, shall be read to the board of directors at the
 22 next meeting after the receipt thereof, and the president,
 23 or other executive officer, of the institution shall within
 24 fourteen days of such meeting notify the commissioner in
 25 writing of the presentation and reading of the communica-
 26 tion and of any action taken thereon by the institution.

27 (c) In lieu of making an examination of a credit union,
 28 the commissioner may accept an examination or audit
 29 report of the condition of the credit union made by the
 30 national credit union administration.

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

**§46A-3-104. Finance charge for loans other than loans made
 pursuant to revolving loan accounts; finance
 charge on assigned contracts; exceptions.**

1 (1) With respect to a consumer loan, other than a
 2 consumer loan made pursuant to a revolving loan account:
 3 (a) A bank, as defined in section two, article one, chapter
 4 thirty-one-a of this code, may contract for and receive a
 5 loan finance charge not exceeding the charge or interest
 6 permitted by the provisions of section thirty, article four,
 7 chapter thirty-one-a or by the provisions of section five,
 8 five-a or five-b, article six, chapter forty-seven of this
 9 code, or that allowed under section two, article seven,
 10 chapter thirty-one-c of this code; (b) a regulated consumer
 11 lender may contract for and receive a loan finance charge
 12 not exceeding the aggregate of the interest and charges
 13 permitted by section one hundred seven, article four,
 14 chapter forty-six-a of this code or by the provisions of
 15 section five, five-a or five-b, article six, chapter forty-
 16 seven of this code; (c) a credit union, as defined in section
 17 one, article one, chapter thirty-one-c of this code, may
 18 contract for and receive a loan finance charge not exceed-

19 ing the charge or interest permitted by the provisions of
20 section two, article seven, chapter thirty-one-c of this
21 code, or by the provisions of section five, article six,
22 chapter forty-seven of this code; and (d) any other lender
23 may contract for and receive a loan finance charge not
24 exceeding the charge or interest permitted by the provi-
25 sions of section five, five-a or five-b, article six, chapter
26 forty-seven of this code.

27 (2) This section does not limit or restrict the manner of
28 calculating the loan finance charge, whether by way of
29 add-on, discount or otherwise, so long as the rate of loan
30 finance charge does not exceed that permitted by this
31 section.

32 (3) If the loan is precomputed:

33 (a) The loan finance charge may be calculated on the
34 assumption that all scheduled payments will be made
35 when due; and

36 (b) The effect of prepayment, refinancing or consolida-
37 tion is governed by the provisions on rebate upon prepay-
38 ment, refinancing or consolidation contained in section
39 one hundred eleven of this article.

40 (4) Notwithstanding subsection (1) of this section, the
41 lender may contract for and receive a minimum loan
42 finance charge of not more than five dollars when the
43 amount loaned does not exceed seventy-five dollars, or
44 seven dollars and fifty cents when the amount loaned
45 exceeds seventy-five dollars.

46 (5) An assignee of a consumer credit sale contract may
47 collect, receive or enforce the sales finance charge pro-
48 vided in said contract, and any such charge so collected,
49 received or enforced by an assignee shall not be deemed
50 usurious or in violation of this chapter or any other
51 provision of this code if such sales finance charge does not
52 exceed the limits permitted to be charged by a seller under
53 the provisions of this chapter.

54 (6) Notwithstanding subsection (5) of this section, a
55 resident lender who is the assignee of a consumer credit
56 sales contract from a credit grantor in another state, and

57 said contract was executed in such other state to finance
58 a retail purchase made by the consumer when the con-
59 sumer was in that other state, may collect, receive or
60 enforce the sales finance charge and other charges includ-
61 ing late fees provided in said contract under the laws of
62 the state where executed. Such charge shall not be deemed
63 to be usurious or in violation of the provisions of this
64 chapter or any other provisions of this code.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-104. Records; annual reports.

1 (1) Every licensee shall maintain records in conformity
2 with generally accepted accounting principles and prac-
3 tices in a manner which will enable the commissioner to
4 determine whether the licensee is complying with the
5 provisions of this article. The record-keeping system of a
6 licensee shall be sufficient if he makes the required
7 information reasonably available. The records need not be
8 kept in the place of business where regulated consumer
9 loans are made, if the commissioner is given free access to
10 the records wherever located. The records pertaining to
11 any loan need not be preserved for more than two years
12 after making the final entry relating to the loan, but in the
13 case of a revolving loan account such two-year period is
14 measured from the date of each entry.

15 (2) On or before the fifteenth day of February each year,
16 every licensee shall file with the commissioner a composite
17 annual report in the form prescribed by the commissioner
18 relating to all regulated consumer loans made by him and
19 showing in detail the actual financial condition and the
20 amount of the assets and liabilities of such financial
21 institution. The commissioner shall consult with compara-
22 ble officials in other states for the purpose of making the
23 kinds of information required in annual reports uniform
24 among the states. Information contained in annual
25 reports shall be confidential and may be published only in
26 composite form.

**§46A-4-107. Loan finance charge for regulated consumer
lenders.**

1 (1) With respect to a regulated consumer loan, including

2 a revolving loan account, a regulated consumer lender
3 may contract for and receive a loan finance charge not
4 exceeding that permitted by this section.

5 (2) On a loan of two thousand dollars or less, which is
6 unsecured by real property, the loan finance charge,
7 calculated according to the actuarial method, may not
8 exceed thirty-one percent per year on the unpaid balance
9 of the principal amount.

10 (3) On a loan of greater than two thousand dollars or
11 which is secured by real property, the loan finance charge,
12 calculated according to the actuarial method, may not
13 exceed twenty-seven percent per year on the unpaid
14 balance of the principal amount: *Provided*, That the loan
15 finance charge on any loan greater than ten thousand
16 dollars may not exceed eighteen percent per year on the
17 unpaid balance of the principal amount. Loans made by
18 regulated consumer lenders shall be subject to the restric-
19 tions and supervision set forth in this article irrespective
20 of their rate of finance charges.

21 (4) Where the loan is nonrevolving and is greater than
22 two thousand dollars, the permitted finance charge may
23 include a charge of not more than a total of two percent of
24 the amount financed for any origination fee, points or
25 investigation fee: *Provided*, That where any loan, revolv-
26 ing or nonrevolving, is secured by real estate, the permit-
27 ted finance charge may include a charge of not more than
28 a total of five percent of the amount financed for any
29 origination fee, points or investigation fee. In any loan
30 secured by real estate, such charges may not be imposed
31 again by the same or affiliated lender in any refinancing
32 of that loan made within twenty-four months thereof,
33 unless these earlier charges have been rebated by payment
34 or credit to the consumer under the actuarial method, or
35 the total of the earlier and proposed charges does not
36 exceed five percent of the amount financed. Charges
37 permitted under this subsection shall be included in the
38 calculation of the loan finance charge. The financing of
39 such charges shall be permissible and shall not constitute
40 charging interest on interest. In a revolving home equity
41 loan, the amount of the credit line extended shall, for

42 purposes of this subsection, constitute the amount fi-
43 nanced. Other than herein provided, no points, origination
44 fee, investigation fee or other similar prepaid finance
45 charges attributable to the lender or its affiliates may be
46 levied. Except as provided for by section one hundred
47 nine, article three of this chapter, no additional charges
48 may be made; nor may any charge permitted by this
49 section be assessed unless the loan is made. To the extent
50 that this section overrides the preemption on limiting
51 points and other such charges on first lien residential
52 mortgages contained in Section 501 of the United States
53 Depository Institutions Deregulation and Monetary
54 Control Act of 1980, the state law limitations contained in
55 this section shall apply. If the loan is precomputed:

56 (a) The loan finance charge may be calculated on the
57 assumption that all scheduled payments will be made
58 when due; and

59 (b) The effect of prepayment, refinancing or consolida-
60 tion is governed by the provisions on rebate upon prepay-
61 ment, refinancing or consolidation contained in section
62 one hundred eleven, article three of this chapter.

63 (5) For the purposes of this section, the term of a loan
64 commences on the date the loan is made. Differences in
65 the lengths of months are disregarded and a day may be
66 counted as one thirtieth of a month. Subject to classifica-
67 tions and differentiations the licensee may reasonably
68 establish, a part of a month in excess of fifteen days may
69 be treated as a full month if periods of fifteen days or less
70 are disregarded and if that procedure is not consistently
71 used to obtain a greater yield than would otherwise be
72 permitted.

73 (6) With respect to a revolving loan account:

74 (a) A charge may be made by a regulated consumer
75 lender in each monthly billing cycle which is one twelfth
76 of the maximum annual rates permitted by this section
77 computed on an amount not exceeding the greatest of:

78 (i) The average daily balance of the debt; or

79 (ii) The balance of the debt at the beginning of the first

80 day of the billing cycle, less all payments on and credits to
81 such debt during such billing cycle and excluding all
82 additional borrowings during such billing cycle. For the
83 purpose of this subdivision a billing cycle is monthly if the
84 billing statement dates are on the same day each month or
85 do not vary by more than four days therefrom.

86 (b) If the billing cycle is not monthly, the maximum loan
87 finance charge which may be made by a regulated con-
88 sumer lender is that percentage which bears the same
89 relation to an applicable monthly percentage as the
90 number of days in the billing cycle bears to thirty.

91 (c) Notwithstanding subdivisions (a) and (b) of this
92 subsection, if there is an unpaid balance on the date as of
93 which the loan finance charge is applied, the licensee may
94 contract for and receive a charge not exceeding fifty cents
95 if the billing cycle is monthly or longer, or the pro rata
96 part of fifty cents which bears the same relation to fifty
97 cents as the number of days in the billing cycle bears to
98 thirty if the billing cycle is shorter than monthly, but no
99 charge may be made pursuant to this subdivision if the
100 lender has made an annual charge for the same period as
101 permitted by the provisions on additional charges.

102 (7) As an alternative to the loan finance charges allowed
103 by subsections (2) and (4) of this section, a regulated
104 consumer lender may on a loan of one thousand two
105 hundred dollars or less contract for and receive interest at
106 a rate of up to thirty-one percent per year on the unpaid
107 balance of the principal amount, together with a non-
108 refundable loan processing fee of not more than two
109 percent of the amount financed: *Provided*, That no other
110 finance charges are imposed on the loan. The processing
111 fee permitted under this subsection shall be included in
112 the calculation of the loan finance charge and the financ-
113 ing of the fee shall be permissible and shall not constitute
114 charging interest on interest.

115 (8) Notwithstanding any contrary provision in this
116 section, a licensed regulated consumer lender who is the
117 assignee of a nonrevolving consumer loan unsecured by
118 real property located in this state, which loan contract

119 was applied for by the consumer when he or she was in
120 another state, and which was executed and had its pro-
121 ceeds distributed in that other state, may collect, receive
122 and enforce the loan finance charge and other charges,
123 including late fees, provided in said contract under the
124 laws of the state where executed: *Provided*, That the
125 consumer was not induced by the assignee or its in-state
126 affiliates to apply and obtain the loan from an out-of-
127 state source affiliated with the assignee in an effort to
128 evade the consumer protections afforded by this chapter.
129 Such charges shall not be deemed to be usurious or in
130 violation of the provisions of this chapter or any other
131 provisions of this code.

**§46A-4-111. Substantial benefit upon refinancing of a loan at
higher rate.**

1 (1) Any nonrevolving consumer loan or consumer credit
2 sale that is refinanced and consolidated with a new loan
3 under this article after the first day of September, one
4 thousand nine hundred ninety-six, at a higher finance rate
5 than allowed merchants by section one hundred one,
6 article three of this chapter must either provide the
7 consumer with a substantial benefit or provide the
8 disclosures set forth in this section. A substantial benefit
9 accrues to the consumer if the transaction:

10 (a) Provides the consumer at least five hundred dollars
11 in new funds for the consumer's own use, excluding any
12 charges connected with the loan; or

13 (b) Provides the consumer with new funds in an amount
14 equal to the original amount of the loan or credit.

15 (2) If no substantial benefit is provided, the lender must
16 comply with the following requirements, except where
17 such an agreement would violate section one hundred
18 eight of this article:

19 (a) The lender must in a fixed rate transaction give the
20 following disclosures in writing to the borrower prior to
21 the execution of the new agreement:

22 "If you do agree to consolidate your existing obligation,
23 you will be paying an annual percentage rate of ____% on

24 the existing balance of \$____, instead of the rate of
25 _____% which you are now paying.

26 I acknowledge receipt of this information _____
27 (initials of borrower).”

28 (b) The lender must allow the borrower the choice of
29 repaying his or her existing loan/credit balance at the
30 originally agreed upon rate and obtaining any additional
31 extension of credit as a separate agreement, notwithstand-
32 ing any law other than section one hundred eight of this
33 article which may limit the borrower’s ability to have
34 multiple loan agreements with the same lender;

35 (c) The lender, where it holds the prior agreement, must
36 refund or credit to the borrower’s account any unearned
37 finance charge and any returned insurance premiums
38 upon cancellation of the insurance sold in connection with
39 the prior agreement;

40 (d) The lender shall, where applicable, provide the
41 borrower prior to the loan’s execution, conspicuous
42 written notice of the provisions of subdivisions (a), (b) and
43 (c) of this subsection;

44 (e) The commissioner may provide and require a modi-
45 fied disclosure form for similar transactions involving
46 adjustable or variable rates, and where applicable, prior
47 to the loan’s execution, the borrower must be given
48 conspicuous written notice of the provisions of subdivi-
49 sions (b) and (c) of this subsection, together with the
50 disclosure form as may be required by this section; and

51 (f) Nothing in this section shall prohibit the receipt of
52 goods or services by the borrower at the time the consoli-
53 dated loan agreement is made, nor shall this section
54 prohibit or pertain to any loan where the refinancing
55 results in the consumer paying the same or a lower finance
56 charge rate.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 24. THE REVERSE MORTGAGE ENABLING ACT.

§47-24-8. Regulatory authority and exemptions.

1 (a) All reverse mortgage loans subject to this article shall

2 be under the jurisdiction and supervision of the commis-
3 sioner of banking, and subject to the regulatory authority
4 and penalties set forth in chapter thirty-one-a of this code.

5 (b) The commissioner of banking shall have the author-
6 ity to promulgate rules in order to affect compliance with
7 the provisions of this article.

8 (c) Persons making reverse mortgage loans through a
9 program authorized by and under the supervision of a
10 federal governmental agency or through a federally
11 sponsored mortgage enterprise are exempt from the
12 provisions of this article, and may make reverse mortgages
13 notwithstanding any provisions to the contrary in this
14 code: *Provided*, That such loans are sold to those agencies
15 or enterprises within forty-five days of loan closing and
16 that the commissioner of banking certifies that the
17 program provides consumers with protections against
18 abusive practices. Loans under this subsection may, like
19 other reverse mortgage loans, also be made or acquired
20 without regard to relevant interpretations of law to the
21 same extent as provided in section five of this article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Kandy Spornore
.....
Chairman Senate Committee

Nick Fantasia
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Carroll Baker
.....
Clerk of the Senate

Bryan W. Gray
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *24th*
Nov day of 1997.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/97

Time 12:40pm