WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 71

(By Senator Herlick, et al)

PASSED March 11, 1997
In Effect NINETY DAYS FROM PASSAGE
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.
(6) "Principal" or "principal sum" means the total of:

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

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

(c) To the extent that payment is deferred:

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

(ii) Additional charges permitted by this article.

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

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

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

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

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

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

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

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

(c) If not included in the cash price:

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

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

(iii) Additional charges permitted by this article.

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

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

(b) The provisions of this article do not apply to loans made by federally insured depository institutions, regulated consumer lender licensees, insurance companies, or to loans made by any other lender licensed by and under the supervision of any agency of the federal government, or to loans made by, or on behalf of, any agency or instrumentality of this state or federal government or by a nonprofit community development organization which loans are subject to federal or state government supervision and oversight. Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article.

(c) A person or entity designated in subsection (b) of this section may take assignments of a secondary mortgage
loan from a licensed lender, and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article, except as such defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

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

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

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

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

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that such applicant has qualified to hold property and transact business in this state;
(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net assets of at least two hundred fifty thousand dollars;

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

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

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

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

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

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net assets of at least ten thousand dollars;
(3) File with the commissioner a bond in favor of the state in the amount of twenty-five thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The nature of the security;
(3) The finance charge rate per annum and the itemized amount of finance charges and additional charges;

(4) The amount financed and total of payments;

(5) Disposition of the principal;

(6) A description of the payment schedule;

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

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

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

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

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

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

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

(b) Upon written request from the borrower, the holder of a secondary mortgage loan instrument shall deliver to the borrower, within ten days from and after receipt of the written request, a statement of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. Charges for providing an account statement may be assessed only where permitted as set forth by subsection
two, section one hundred fourteen, article two, chapter forty-six-a of this code.

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

(d) Upon written request or authorization from the borrower, the holder of a secondary mortgage loan instrument shall send or otherwise provide to the borrower or his or her designee, within two business days after receipt of the written request or authorization, a payoff statement of the borrower's account. Except as provided by this subsection, no charge may be made for providing the payoff statement. Charges for the actual expenses associated with using a third-party courier delivery or expedited mail delivery service may be assessed when this type of delivery is requested and authorized by the borrower, following disclosure to the borrower of its cost. The payoff information shall be provided by mail, telephone, courier, facsimile, or other transmission as requested by the borrower or his or her designee.

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

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

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

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

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

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.

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

(a) Subject to the powers vested in the board by article
three of this chapter, the commissioner shall have supervi-
sion and jurisdiction over state banks, regulated consumer
lenders, second mortgage lenders and brokers, credit
unions, and all other persons now or hereafter made
subject to his supervision or jurisdiction. All powers,
duties, rights and privileges vested in the department are
hereby vested in the commissioner. He shall be the chief
executive officer of the department of banking and shall
be responsible for the department's organization, services and personnel, and for the orderly and efficient administration, enforcement and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the department or the commissioner.

(b) The commissioner shall:

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

2. Require all financial institutions to comply with all the provisions of this chapter and other applicable laws, or any rule and regulation promulgated or order issued...
(3) Investigate all alleged violations of this chapter and all other laws which he is required to enforce and of any rule and regulation promulgated or order issued thereunder.

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

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

(2) Employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the department, including, but not limited to, examiners, assistant examiners, conservators and receivers, to establish the amount and condition of bonds for such thereof as he deems appropriate and to pay the premiums thereon, and if he so elects, to have all such personnel subject to and under the classified service of the state personnel department;

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

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

(5) To call for and require all such data, reports and information from financial institutions under his jurisdiction, at such times and in such form, content and detail, deemed necessary by him in the faithful discharge of his
(6) Subject to the powers vested in the board by article three of this chapter, to supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision thereof, to require financial institutions to:

(A) Maintain their accounts consistent with such regulations as he may prescribe and in accordance with generally accepted accounting practices;

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

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

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

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

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

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

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

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

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

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

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or
persons and to consider any request, petition or applica-
tion relating to the organization, location, conduct, services, policies and procedures of any financial institu-
tion and to act thereupon in accordance with any provi-
sions of law applicable thereto;

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

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

(10) To study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state, and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and to compile and keep current data thereon to aid and guide him in the administration of the duties of his office;

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

(12) To implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules and regulations do not conflict with any rules and regulations
promulgated by the state's attorney general;

(13) To foster and encourage a working relationship between the department of banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

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

(15) To delegate the powers and duties of his office, other than the powers and duties in this subsection hereinafter excepted, to qualified department personnel, who shall act under the direction and supervision of the commissioner and for whose acts he shall be responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other department personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner shall likewise be responsible:

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

(B) To order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor thereof;

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

(D) To accept an assurance in writing that the person
will not in the future engage in the conduct alleged by the
commissioner to be unlawful, which conduct could be
subject to an order under the provisions of this chapter.
Such assurance of voluntary compliance shall not be
considered an admission of violation for any purpose,
except that if a person giving such assurance fails to
comply with its terms, the assurance is prima facie
evidence that prior to such assurance the person engaged
in conduct described in such assurance;

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

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

(18) To take such other action as he may deem necessary
to enforce and administer the provisions of this chapter
(except the provisions of article three) and all other laws
which he is empowered to administer and enforce, and to
apply to any court of competent jurisdiction for appropri-
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.

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

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

The commissioner of banking, in his or her discretion,
may: (a) Accept a copy of a reasonably current examina-
tion of any banking institution made by the federal
deposit insurance corporation or the federal reserve
system in lieu of an examination of the banking institution
required or authorized to be made by the laws of this
state, and the commissioner may furnish to the federal
deposit insurance corporation or the federal reserve
system or to any official or examiner thereof, any copy or
copies of the commissioner’s examinations of and reports
on the banking institutions; (b) accept a copy of a reason-
ably current examination of any out-of-state bank or any
West Virginia state bank’s out-of-state activities made by
another state’s banking regulatory authority in lieu of an
examination of the banking institution required or
authorized to be made by the laws of this state, and the
commissioner may furnish to such other state’s banking
regulatory authority or to any official or examiner thereof,
any copy or copies of the commissioner’s examinations of
and reports on such banking institutions; but nothing
herein shall be construed to limit the duty and responsibil-
ity of banking institutions to comply with all provisions of
law relating to examinations and reports, nor to limit the
powers and authority of the commissioner of banking with
reference to examinations and reports under existing laws.
The provision or exchange of examination reports and
other records of financial condition and individuals
pursuant to cooperative, coordinating or information-
sharing agreements with other bank supervisory agencies
and persons as permitted by this chapter under an agree-
ment of confidentiality, shall not constitute a violation of
section four of this article.

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

(a) All moneys collected by the commissioner from
financial institutions and bank holding companies for
assessments, examination fees, investigation fees or other
necessary expenses incurred by the commissioner in
administering such duties shall be paid to the commis-
ioner and paid by the commissioner to the treasurer of
the state to the credit of a special revenue account to be
known as the “Commissioner’s Assessment and Examina-
tion Fund” which is hereby established. The assessments
and fees paid into this account shall be appropriated by
law and used to pay the costs and expenses of the division
of banking and all incidental costs and expenses necessary
for its operations. At the end of each fiscal year, if the
fund contains a sum of money in excess of twenty percent
of the appropriated budget of the division of banking, the
amount of the excess shall be transferred to the general
revenue fund of the state. The Legislature may appropri-
ate money to start the special revenue account.

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

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

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Million</td>
<td>Million</td>
<td>Amount</td>
<td>Million</td>
<td></td>
</tr>
<tr>
<td>$ 0</td>
<td>0</td>
<td>0</td>
<td>.001645020</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>20</td>
<td>2,290</td>
<td>.000205628</td>
<td>2</td>
</tr>
<tr>
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<td>100</td>
<td>6,991</td>
<td>.000164502</td>
<td>20</td>
</tr>
<tr>
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</tr>
<tr>
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<td>.000055988</td>
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<tr>
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<td>40,000</td>
<td>1,224,292</td>
<td>.000052670</td>
<td>20,000</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Total Outstanding Balances</th>
<th>Over</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,000,000</td>
<td>1,000,000</td>
<td>$800</td>
<td>$800</td>
<td>.000400</td>
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<td>10,000,000</td>
<td>2,400</td>
<td>.000200</td>
<td>5,000,000</td>
<td></td>
</tr>
<tr>
<td>10,000,000</td>
<td>-</td>
<td>4,200</td>
<td>.000100</td>
<td>10,000,000</td>
<td></td>
</tr>
</tbody>
</table>

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

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

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>Over</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000</td>
<td>500,000</td>
<td>500</td>
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<td>500</td>
<td>.000200</td>
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<td></td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
<td>2,100</td>
<td>.000100</td>
<td>10,000,000</td>
<td></td>
</tr>
</tbody>
</table>

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

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

Assessments shall be prescribed annually, not later than
the fifteenth day of June, by written order of the commis-
sioner, but shall not exceed the maximums as set forth in
subsection (b) of this section. In setting the assessments
the primary consideration shall be the amount appropri-
atated by the Legislature for the division of banking for the
corresponding annual period. Reasonable notice of the
assessments shall be made to all interested parties. All
orders of the commissioner for the purpose of setting
assessments are not subject to the provisions of the West
Virginia administrative procedures act, under chapter
twenty-nine-a of this code.

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

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

(f) The commissioner of banking may maintain an action
for the recovery of all assessments, costs and expenses in
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.

(a) Subject to the provisions of subsections (e), (f), (g)
and (h) of this section and to the provisions of subsection
(j), section twelve, article eight of this chapter, notice and
hearing shall be provided in advance of the entry of any
order by the board.
(1) Such notice shall be given to the financial institution or person with respect to whom the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board, but shall not be held less than ten or more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good cause shown.

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

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

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

(d) The board shall have the power and authority to
issue subpoenas and subpoenas duces tecum, administer oaths and examine any person under oath in connection with any subject relating to duties imposed upon or powers vested in the board.

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

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

(g) Whenever the board shall find that the financial condition of a state banking institution or national banking association constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section six or seven, article four of this chapter and without notice or hearing enter an order approving or disapproving an application to incorporate a state banking institution which is being formed to purchase the business and assets or assume the liabilities of, or both, or merge or consolidate with, such state banking institution or national banking institution the financial condition of which constitutes an imminent peril to its depositors, savings account holders, other customers or creditors. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons
affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

(h) Whenever the board shall find that the financial condition of a state banking institution, national association or bank holding company constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section five or six, article eight-a of this chapter and without notice of hearing enter an order approving or disapproving an application by an existing bank holding company or by an organizing bank holding company to acquire in whole or in part, directly or indirectly, such state banking institution, national association or bank holding company. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby at the earliest practicable time.

(i) Definitions:

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

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

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-9. Fidelity bonds and insurance.
(a) The directors of a state bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the bank.

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

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

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

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

(a) Every state banking institution which files the reports required in section fifteen of this article and which is not otherwise prohibited by the commissioner or federal
bank regulators from doing so, shall have and exercise the following powers:

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

(2) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the constitution and laws of the United States of America or of this state, and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;

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

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

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

(6) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including, without limitation, notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of such personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which such items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or
instruments creating the trust, or, in the absence of any specification of terms, at such time and upon such terms as the trustee shall deem reasonable; and

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

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

(c) Banks having their main office in another state which lawfully have a branch in this state pursuant to the provisions of federal law or articles eight-d or eight-e of this chapter which have been, or hereafter may be, authorized under the laws of the United States or the laws of the state in which such bank is chartered to act as trustee and in other fiduciary capacities in the state in which their main office is located shall have all the rights, powers, privileges and immunities conferred hereunder, 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.

(a) Notwithstanding any other provision of this code, and unless the will, deed or other instrument creating a trust or fiduciary account or relationship specifically provides otherwise, any affiliate subsidiary which is empowered with and authorized to exercise trust powers, or otherwise performs fiduciary services for a fee, may, without any order or other action on the part of any court or otherwise, transfer to any other affiliate subsidiary exercising or authorized to exercise trust powers any or all rights, franchises and interests in its fiduciary accounts or relationships, including, but not limited to, any or all appointments, designations and nominations and any other rights, franchises and interests, as trustee, executor,
administrator, guardian, committee, escrow agent, transfer and paying agent of stocks and bonds and every other fiduciary capacity; and the transferee or receiving affiliate subsidiary shall hold and enjoy all rights of property, franchises and interests in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by the transferor affiliate subsidiary. As to transfers to an affiliate subsidiary pursuant to this section, the receiving affiliate subsidiary shall take, receive, accept, hold, administer and discharge any grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of, or in the name of, the transferor affiliate subsidiary, whether made, executed or entered before or after such transfer and whether to vest or become effective before or after such transfer, as fully and to the same effect as if the receiving affiliate subsidiary had been named and in such deed, deed of trust, will, agreement, order or other instrument instead of such transferor affiliate subsidiary. All acts taken or performed in its own name or in the name of or on behalf of the transferor affiliate subsidiary by any receiving affiliate subsidiary as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary with respect to fiduciary accounts or relationships transferred pursuant to this section are as good, valid and effective as if made by the transferor affiliate subsidiary.

(b) For purposes of this section, the term “affiliate subsidiary” means any two or more subsidiaries (as the term “subsidiary” is defined in section one, article eight-a of this chapter) which are “banks” or “banking institutions” (as those terms are defined in section two, article one of this chapter) and which have a common bank holding company as their parent company. For purposes of this section, the term “bank holding company” shall have the meaning set forth in section one, article eight-a of this chapter.

(c) At least thirty days before any transfer authorized by this section, the transferor affiliate subsidiary shall send
31  [Enr. S. B. No. 71

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

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

(a) The Legislature hereby finds and declares that:

(1) Under federal banking laws, national banking associations are permitted to charge interest on loans at a rate not exceeding one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the federal reserve district where the national banking association is located;

(2) Banks chartered under the laws of West Virginia should be able to charge interest on a comparable basis, and hence avoid being placed at a competitive disadvantage in relation to national banking associations having their principal offices in the state;

(3) It is in the best interest of the citizens of this state to preserve the state banking system and to that end, and in order to foster equitable competition as to interest rates, to provide a means by which banks chartered under the laws of West Virginia, as an alternative, to the interest rates authorized by any other provisions of this code, may charge interest at a rate comparable to the rate permitted to national banking associations; Therefore,
(4) As an alternative to the interest rate authorized by any other provisions of this code, any bank now or hereafter chartered under the laws of West Virginia may, after the effective date of this section, on any loan of money, contract in writing for the payment of interest at a rate, including points expressed as a percentage of the loan divided by the number of years of the loan contract, not to exceed one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the federal reserve district where the state bank is located.

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

(c) A commitment to make a loan pursuant to this section which provides for consummation within some future time may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum rate of interest at the time the loan contract is entered into is less than a commitment rate of interest: Provided, That the commitment rate of interest does not exceed the maximum interest rate in effect on the date the commitment was issued: Provided, however, That the commitment when agreed to by the borrower constitutes a legally binding obligation on the part of such person or such bank to make such a loan within a specified time period in the future at a rate of interest not exceeding the maximum rate of interest effective as of the date of commitment, and the commitment does not include any condition for increase of the interest rate at the time of loan consummation even though the maximum rate of interest is then higher.

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

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.
§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 this state at any place other than at its principal office in this state, at a branch bank in this state, at a customer bank communication terminal permitted by section twelve-b of this article or at any loan origination office permitted by section twelve-c of this article:

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

3. (2) A banking institution located in a county where there is also a higher educational institution as defined in section two, article one, chapter eighteen-b of this code, may establish a temporary business office on the campus of any such educational institution located in such county for the limited purposes of opening accounts and accepting deposits for a period not in excess of four business days per semester, trimester or quarter: Provided, That prior to opening any temporary office, a banking institution must first obtain written permission from the institution of higher education. The term "business days", for the...
purpose of this subsection, means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code;

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

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

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

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

(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

(d) Notwithstanding any other provision of this chapter to the contrary, subject to and in furtherance of the board’s authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subsection (g) of this section, the board may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The main office or a branch of a West Virginia state
(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide the same banking services and exercise the same powers at each such branch bank as may be provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application to establish a branch bank, provide notice of such application to all banking institutions. A banking institution may, within ten days after receipt of such notice, file a petition to intervene and shall, if it so files such petition, thereafter become a party to any hearing relating thereto before the board.

(h) The commissioner shall prescribe the form of the application for a branch bank and shall collect an examination and investigation fee of one thousand dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and two thousand five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of five hundred dollars. The board shall complete the examination and investigation within ninety days from the date on which such application and fee are received, unless the board requests in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution, in which event such ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of such request and the date such additional information and disclosures are received.
Upon completion of the examination and investigation with respect to such application, the board shall, if a hearing be required pursuant to subsection (j) of this section, forthwith give notice and hold a hearing pursuant to the following provisions:

1. Notice of such hearing shall be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board but shall not be less than ten nor more than thirty days after such notice is given;

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

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

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

1. Public convenience and advantage will be promoted by the establishment of the proposed branch bank;
(2) Local conditions assure reasonable promise of successful operation of the proposed branch bank and of those banks and branches thereof already established in the community;

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

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

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

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

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

(l) Pursuant to the resolution of its board of directors
and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days prior public notice given in such form and manner as the commissioner prescribes.

(m) Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable 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.

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

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

(a) Any banking institution as defined in section two, article one of this chapter, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon ten days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals. Any banking institution which installs and operates a customer bank communication terminal:
(1) Shall make such customer bank communication terminal available for use by other banking institutions; and

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

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

(c) For purposes of this section, "customer bank communication terminal" means any electronic device or machine owned, leased, or operated by a bank, together with all associated equipment, structures and systems, including, without limitation, point of sale terminals, through or by means of which a customer and a banking institution may engage in any banking transactions, whether transmitted to the banking institution instantaneously or otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer's benefit.
Personal computers, telephones and associated equipment which enable a bank customer to conduct banking transactions at their home or office through links to their bank's computer or telephone network, do not constitute a "customer bank communication terminal" under this section. All transactions initiated through a customer bank communication terminal shall be subject to verification by the banking institution.

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

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

(f) Nothing in this section prevents point of sale terminals and associated equipment from being owned, leased or operated by nonbanking entities: Provided, That such persons may not engage in the business of banking by using point of sale devices. The use of a point of sale terminal to enable a customer or other person to withdraw and obtain cash of more than fifty dollars in excess of the sales transaction purchase amount, will be presumed to constitute engaging in the business of banking.
(g) Except for customer bank communication terminals located on the premises of the principal office or a branch bank of the banking institution or on the premises of an authorized off-premises walk-in or drive-in banking facility, a customer bank communication terminal shall be unattended or attended by persons not employed by any banking institution utilizing the terminal: Provided, That:

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

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

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

CHAPTER 31C. CREDIT UNIONS.

ARTICLE 1. SUPERVISION AND REGULATION.

§31C-1-5. Examinations.

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

(b) A report of such examination shall be forwarded to the credit union's board of directors within thirty days after completion. Said report shall contain comments relative to the management of the affairs of the credit union and the general condition of its assets. Within thirty days after the receipt of such report, the directors and committee members shall meet to consider matters contained in the report. Every official communication
from the commissioner to any such institution, or to any
officer thereof, relating to an examination or an investiga-
tion of the affairs of such institution conducted by the
commissioner or containing suggestions or recommenda-
tions as to the manner of conducting the business of the
institution, shall be read to the board of directors at the
next meeting after the receipt thereof, and the president,
or other executive officer, of the institution shall within
fourteen days of such meeting notify the commissioner in
writing of the presentation and reading of the communica-
tion and of any action taken thereon by the institution.

(c) In lieu of making an examination of a credit union,
the commissioner may accept an examination or audit
report of the condition of the credit union made by the
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) With respect to a consumer loan, other than a
consumer loan made pursuant to a revolving loan account:
(a) A bank, as defined in section two, article one, chapter
thirty-one-a of this code, may contract for and receive a
loan finance charge not exceeding the charge or interest
permitted by the provisions of section thirty, article four,
chapter thirty-one-a or by the provisions of section five,
five-a or five-b, article six, chapter forty-seven of this
code, or that allowed under section two, article seven,
chapter thirty-one-c of this code; (b) a regulated consumer
lender may contract for and receive a loan finance charge
not exceeding the aggregate of the interest and charges
permitted by section one hundred seven, article four,
chapter forty-six-a of this code or by the provisions of
section five, five-a or five-b, article six, chapter forty-
seven of this code; (c) a credit union, as defined in section
one, article one, chapter thirty-one-c of this code, may
contract for and receive a loan finance charge not exceed-
ing the charge or interest permitted by the provisions of
section two, article seven, chapter thirty-one-c of this
code, or by the provisions of section five, article six,
chapter forty-seven of this code; and (d) any other lender
may contract for and receive a loan finance charge not
exceeding the charge or interest permitted by the provi-
sions of section five, five-a or five-b, article six, chapter
forty-seven of this code.

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

(3) If the loan is precomputed:

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

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

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

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

(6) Notwithstanding subsection (5) of this section, a
resident lender who is the assignee of a consumer credit
sales contract from a credit grantor in another state, and
said contract was executed in such other state to finance a retail purchase made by the consumer when the consumer was in that other state, may collect, receive or enforce the sales finance charge and other charges including late fees provided in said contract under the laws of the state where executed. Such charge shall not be deemed to be usurious or in violation of the provisions of this 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 with generally accepted accounting principles and practices in a manner which will enable the commissioner to determine whether the licensee is complying with the provisions of this article. The record-keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where regulated consumer loans are made, if the commissioner is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account such two-year period is measured from the date of each entry.

15 (2) On or before the fifteenth day of February each year, every licensee shall file with the commissioner a composite annual report in the form prescribed by the commissioner relating to all regulated consumer loans made by him and showing in detail the actual financial condition and the amount of the assets and liabilities of such financial institution. The commissioner shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in 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
6 (2) On a loan of two thousand dollars or less, which is
7 unsecured by real property, the loan finance charge,
8 calculated according to the actuarial method, may not
9 exceed thirty-one percent per year on the unpaid balance
10 of the principal amount.
11
12 (3) On a loan of greater than two thousand dollars or
13 which is secured by real property, the loan finance charge,
14 calculated according to the actuarial method, may not
15 exceed twenty-seven percent per year on the unpaid
16 balance of the principal amount: Provided, That the loan
17 finance charge on any loan greater than ten thousand
18 dollars may not exceed eighteen percent per year on the
19 unpaid balance of the principal amount. Loans made by
20 regulated consumer lenders shall be subject to the restric-
21 tions and supervision set forth in this article irrespective
22 of their rate of finance charges.
23
24 (4) Where the loan is nonrevolving and is greater than
25 two thousand dollars, the permitted finance charge may
26 include a charge of not more than a total of two percent of
27 the amount financed for any origination fee, points or
28 investigation fee: Provided, That where any loan, revolv-
29 ing or nonrevolving, is secured by real estate, the permit-
30 ted finance charge may include a charge of not more than
31 a total of five percent of the amount financed for any
32 origination fee, points or investigation fee. In any loan
33 secured by real estate, such charges may not be imposed
34 again by the same or affiliated lender in any refinancing
35 of that loan made within twenty-four months thereof,
36 unless these earlier charges have been rebated by payment
37 or credit to the consumer under the actuarial method, or
38 the total of the earlier and proposed charges does not
39 exceed five percent of the amount financed. Charges
40 permitted under this subsection shall be included in the
41 calculation of the loan finance charge. The financing of
42 such charges shall be permissible and shall not constitute
43 charging interest on interest. In a revolving home equity
44 loan, the amount of the credit line extended shall, for
purposes of this subsection, constitute the amount fin-
nanced. Other than herein provided, no points, origination
fee, investigation fee or other similar prepaid finance
charges attributable to the lender or its affiliates may be
levied. Except as provided for by section one hundred
nine, article three of this chapter, no additional charges
may be made; nor may any charge permitted by this
section be assessed unless the loan is made. To the extent
that this section overrides the preemption on limiting
points and other such charges on first lien residential
mortgages contained in Section 501 of the United States
Depository Institutions Deregulation and Monetary
Control Act of 1980, the state law limitations contained in
this section shall apply. If the loan is precomputed:

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

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

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

(6) With respect to a revolving loan account:

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

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

(ii) The balance of the debt at the beginning of the first
day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle. For the purpose of this subdivision a billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

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

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

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

(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property located in this state, which loan contract
was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive and enforce the loan finance charge and other charges, including late fees, provided in said contract under the laws of the state where executed: Provided, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges shall not be deemed to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

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

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

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

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

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

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

“If you do agree to consolidate your existing obligation, you will be paying an annual percentage rate of ____% on
the existing balance of $____, instead of the rate of
_____ % which you are now paying.
I acknowledge receipt of this information __________
(initials of borrower).

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

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

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

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

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

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 24. THE REVERSE MORTGAGE ENABLELING ACT.

§47-24-8. Regulatory authority and exemptions.
(a) All reverse mortgage loans subject to this article shall
be under the jurisdiction and supervision of the commissioner of banking, and subject to the regulatory authority and penalties set forth in chapter thirty-one-a of this code.

(b) The commissioner of banking shall have the authority to promulgate rules in order to affect compliance with the provisions of this article.

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

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

Speaker House of Delegates

The within........................................... this the ........................................... day of ........................................... 1997.

[Signature]

Governor