WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4096
(By Delegates Thompson, Jenkins, Kominar,
H. White, Heck, Hunt and Tomblin)

Passed March 14, 1998

In Effect Ninety Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4096
(BY DELEGATES THOMPSON, JENKINS, KOMINAR,
H. WHITE, HECK, HUNT AND TOMBLIN)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duty of banking commissioner to require criminal background investigations of certain applicants regulated by the banking division.

Be it enacted by the Legislature of West Virginia:

That section four, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

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

1 (a) Subject to the powers vested in the board by article three of this chapter, the commissioner shall have supervision 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 or her supervision or jurisdiction. All
powers, duties, rights and privileges vested in the
department are hereby vested in the commissioner. He or
she 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 or her 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 promulgated or order issued thereunder;

(3) Investigate all alleged violations of this chapter and
    all other laws which he or she is required to enforce and of
    any rule promulgated or order issued thereunder;

(4)(1) Require a criminal background investigation,
    including fingerprint checks, of each: (A) Applicant
    seeking approval to charter and/or control a state bank,
    state credit union, or a foreign bank state agency or
    representative office; (B) applicant seeking a license to
    engage in the business of money transmission, currency
    exchange, or other activity regulated under article two,
    chapter thirty-two-a of this code; (C) applicant subject to
    the commissioner’s supervision seeking a license to
    engage in the business of regulated consumer lending,
    mortgage lending or brokering; and (D) department of
    banking financial institutions regulatory employee
    applicant, to be made through the West Virginia state
    police and the federal bureau of investigation: Provided,
    That where the applicant is a company or entity already
    subject to supervision and regulation by the federal
    reserve board or other federal bank, thrift or credit union
    regulator, or is a direct or indirect subsidiary of a
    company or entity subject to such supervision and
    regulation, or where the applicant is a company subject to
    the supervision and regulation of the federal securities and
    exchange commission whose stock is publicly traded on a
    registered exchange or through the national association of
    securities dealers automated quotation system, or the
    applicant is a direct or indirect subsidiary of such a
    company, the investigation into criminal background shall
    not be so required. The provisions of this subdivision are
    not applicable to applicants seeking interim bank charters
    organized solely for the purpose of facilitating the
    acquisition of another bank pursuant to section five, article
    four of this chapter.

(2) Where a nonexempt applicant hereunder is not a
natural person, the principals of the applicant shall be
subject to the requirements of subdivision (1) of this
subsection. As used in this subdivision, the term
"principals" means the chief executive officer, regardless
of title, managing partner if a partnership, members of the
organizing group if no chief executive officer has yet
been appointed, trustee, or other person controlling the
conduct of the affairs of a licensee. A person controlling
ten percent or more of the stock of any corporate
applicant shall be deemed to be a principal under this
provision.

(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 forms as
appropriate, which rules shall be promulgated in
accordance with article three, chapter twenty-nine-a of this
code;

(2) To 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
or she deems appropriate and to pay the premiums
thereon, and if he or she 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 or her
opinion may warrant;
(5) To call for and require all such data, reports and
information from financial institutions under his or her
jurisdiction, at such times and in such form, content and
detail, deemed necessary by him or her in the faithful
discharge of his or her duties and responsibilities in the
supervision of the financial institutions;

(6) Subject to the powers vested in the board by 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 or she may prescribe and in accordance
with generally accepted accounting practices;

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

(C) Charge off the whole or any part of an asset which
at the time of his or her action could 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 or she 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 or her
judgment be required of the institution in order to
maintain its stability, integrity and security as required by law and all rules promulgated by him or her; and

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

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or persons and to consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act thereupon in accordance with any provisions 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 or her;

(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 or her in the administration of the duties of his or her office;

(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of 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 in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules do not conflict with any rules 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 or her 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 or her 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 or she 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 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
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
applications to change the locations of their principal
offices and to approve or disapprove such applications;

and

(18) To take such other action as he or she may deem
necessary to enforce and administer the provisions of this
chapter (except the provisions of article three) and all
other laws which he or she is empowered to administer and
enforce, and to apply to any court of competent
jurisdiction for appropriate orders, writs, processes and
remedies.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _______ approved this the ________ day of _________, 1998.

Governor