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# 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

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STATE OF WEST VIRGINIA  
SERIALS SECTION

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COMMITTEE SUBSTITUTE

FOR

**H. B. 4096**

(BY DELEGATES THOMPSON, JENKINS, KOMINAR,  
H. WHITE, HECK, HUNT AND TOMBLIN)

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

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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
- 2 three of this chapter, the commissioner shall have
- 3 supervision and jurisdiction over state banks, regulated
- 4 consumer lenders, second mortgage lenders and brokers,
- 5 credit unions, and all other persons now or hereafter made

6 subject to his or her supervision or jurisdiction. All  
7 powers, duties, rights and privileges vested in the  
8 department are hereby vested in the commissioner. He or  
9 she shall be the chief executive officer of the department  
10 of banking and shall be responsible for the department's  
11 organization, services and personnel, and for the orderly  
12 and efficient administration, enforcement and execution  
13 of the provisions of this chapter and all laws vesting  
14 authority or powers in or prescribing duties or functions  
15 for the department or the commissioner.

16 (b) The commissioner shall:

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

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

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

53 (4)(1) Require a criminal background investigation,  
54 including fingerprint checks, of each: (A) Applicant  
55 seeking approval to charter and/or control a state bank,  
56 state credit union, or a foreign bank state agency or  
57 representative office; (B) applicant seeking a license to  
58 engage in the business of money transmission, currency  
59 exchange, or other activity regulated under article two,  
60 chapter thirty-two-a of this code; (C) applicant subject to  
61 the commissioner's supervision seeking a license to  
62 engage in the business of regulated consumer lending,  
63 mortgage lending or brokering; and (D) department of  
64 banking financial institutions regulatory employee  
65 applicant, to be made through the West Virginia state  
66 police and the federal bureau of investigation: *Provided,*  
67 That where the applicant is a company or entity already  
68 subject to supervision and regulation by the federal  
69 reserve board or other federal bank, thrift or credit union  
70 regulator, or is a direct or indirect subsidiary of a  
71 company or entity subject to such supervision and  
72 regulation, or where the applicant is a company subject to  
73 the supervision and regulation of the federal securities and  
74 exchange commission whose stock is publicly traded on a  
75 registered exchange or through the national association of  
76 securities dealers automated quotation system, or the  
77 applicant is a direct or indirect subsidiary of such a  
78 company, the investigation into criminal background shall  
79 not be so required. The provisions of this subdivision are  
80 not applicable to applicants seeking interim bank charters  
81 organized solely for the purpose of facilitating the  
82 acquisition of another bank pursuant to section five, article  
83 four of this chapter.

84 (2) Where a nonexempt applicant hereunder is not a  
85 natural person, the principals of the applicant shall be  
86 subject to the requirements of subdivision (1) of this

87 subsection. As used in this subdivision, the term  
88 “principals” means the chief executive officer, regardless  
89 of title, managing partner if a partnership, members of the  
90 organizing group if no chief executive officer has yet  
91 been appointed, trustee, or other person controlling the  
92 conduct of the affairs of a licensee. A person controlling  
93 ten percent or more of the stock of any corporate  
94 applicant shall be deemed to be a principal under this  
95 provision.

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

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

106 (2) To employ, direct, discipline, discharge and  
107 establish qualifications and duties for all personnel for the  
108 department, including, but not limited to, examiners,  
109 assistant examiners, conservators and receivers, to establish  
110 the amount and condition of bonds for such thereof as he  
111 or she deems appropriate and to pay the premiums  
112 thereon, and if he or she so elects, to have all such  
113 personnel subject to and under the classified service of the  
114 state personnel department;

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

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

126 (5) To call for and require all such data, reports and  
127 information from financial institutions under his or her  
128 jurisdiction, at such times and in such form, content and  
129 detail, deemed necessary by him or her in the faithful  
130 discharge of his or her duties and responsibilities in the  
131 supervision of the financial institutions;

132 (6) Subject to the powers vested in the board by article  
133 three of this chapter, to supervise the location,  
134 organization, practices and procedures of financial  
135 institutions and, without limitation on the general powers  
136 of supervision thereof, to require financial institutions to:

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

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

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

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

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

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

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

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

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

159 (J) Take such other action as may in his or her  
160 judgment be required of the institution in order to

161 maintain its stability, integrity and security as required by  
162 law and all rules promulgated by him or her; and

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

164 (7) Subject to the powers vested in the board by article  
165 three of this chapter, to receive from any person or  
166 persons and to consider any request, petition or  
167 application relating to the organization, location, conduct,  
168 services, policies and procedures of any financial  
169 institution and to act thereupon in accordance with any  
170 provisions of law applicable thereto;

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

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

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

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

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

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

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

219 (15) To delegate the powers and duties of his or her  
220 office, other than the powers and duties in this subsection  
221 hereinafter excepted, to qualified department personnel,  
222 who shall act under the direction and supervision of the  
223 commissioner and for whose acts he or she shall be  
224 responsible, but the commissioner may delegate to the  
225 deputy commissioner of banking and to no other  
226 department personnel the following powers, duties and  
227 responsibilities, all of which are hereby granted to and  
228 vested in the commissioner and for all of which the  
229 commissioner shall likewise be responsible:

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

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

236 (C) To revoke the certificate of authority, permit or



237 license of any financial institution except a banking  
238 institution in accordance with the provisions of section  
239 thirteen of this article; and

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

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

256 (17) To receive from state banking institutions  
257 applications to change the locations of their principal  
258 offices and to approve or disapprove such applications;  
259 and

260 (18) To take such other action as he or she may deem  
261 necessary to enforce and administer the provisions of this  
262 chapter (except the provisions of article three) and all  
263 other laws which he or she is empowered to administer and  
264 enforce, and to apply to any court of competent  
265 jurisdiction for appropriate orders, writs, processes and  
266 remedies.

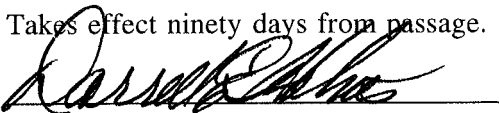
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

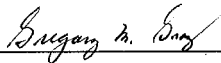
  
Chairman Senate Committee

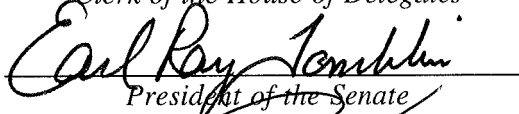
  
Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

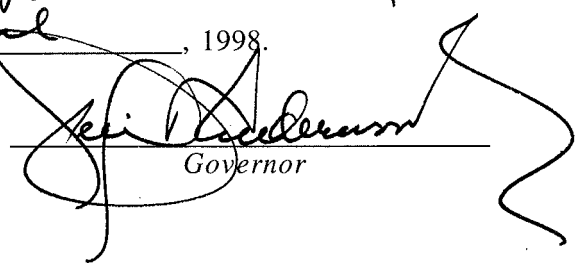
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 6th  
day of April, 1998.

  
Governor

PRESENTED TO THE

GOVERNOR,

Date 3/26/98

Time 10:20 am

