WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED
Sen. Sub. for Com. Sub. for
SENATE BILL NO. 282

(By Senator ____________________________)

PASSED ________________________________

In Effect ____________________________
ENROLLED

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 282

(SENATORS MINARD, KESSLER, HELMICK
AND HUNTER, original sponsors)

[Passed March 9, 2002; 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 powers of the commissioner of banking; and eliminating the requirement that the commissioner maintain an office at the capitol complex.

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 division 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 has 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 division are hereby vested in the commissioner. He or she shall be the chief executive officer of the division of banking and is responsible for the division'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 division or the commissioner.

(b) The commissioner shall:

(1) Maintain an office for the division and there keep a complete record of all the division's transactions, of the financial conditions of all financial institutions and records of the activities of other persons as the commissioner considers important. Notwithstanding any other provision of this code, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained in the records shall be confidential for the use of the commissioner and authorized personnel of the division of banking. No person shall divulge any information contained in any records except as authorized in this subdivision 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
comissioner, who shall authorize disclosure of relevant records and information from the records for good cause, upon imposing terms and conditions considered 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 the records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner has and may exercise reasonable discretion as to the time, manner and extent the other records in his or her office and the information contained in the records are 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; and

(4) 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) division 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 the
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 is not 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: Provided, how­
ever, That where a nonexempt applicant under this
subdivision is not a natural person, the principals of the
applicant are subject to the requirements of this subdivi­sion. 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 considered 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 may:

(1) Provide for the organization of the division and the
procedures and practices of the division and implement
the procedures and practices by the promulgation of rules
and forms as appropriate and the rules 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 division,
including, but not limited to, examiners, assistant examin­ers, conservators and receivers, establish the amount and
condition of bonds for the personnel he or she considers
appropriate and pay the premiums on the bonds and, if he
or she elects, have all personnel subject to and under the
classified service of the state personnel division;

(3) 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, 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) Call for and require any data, reports and informa-
tion from financial institutions under his or her jurisdic-
tion, at such times and in such form, content and detail
considered necessary by him or her in the faithful dis-
charge 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, supervise the location, organization,
practices and procedures of financial institutions and,
without limitation on the general powers of supervision of
financial institutions, require financial institutions to:

(A) Maintain their accounts consistent with rules pre-
scribed by the commissioner 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 ac-
quired;

(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 other risks as he or she may 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 other action that in his or her judgment is 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, receive from any person or persons and consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act on the request, petition or application in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall 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 a hearing may be accompanied by an attorney employed by him or her;

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

(10) 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 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) Implement all of the provisions of this chapter, except the provisions of article three of this chapter, 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) 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 as long as the rules do not conflict with any rules promulgated by the state's attorney general;

(13) Foster and encourage a working relationship between the division 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) 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 any other forms and printed materials found by him or her to be helpful to financial institutions, their shareholders, depositors and patrons and make reasonable charges for the copies;
Delegate the powers and duties of his or her office, other than the powers and duties excepted in this subdivision, to qualified division personnel who shall act under the direction and supervision of the commissioner and for whose acts he or she is responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other division 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 also is responsible. The commissioner shall:

(A) 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) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;

(C) 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) 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 could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is prima facie evidence that prior to this assurance the person engaged in conduct described in the assurance;

(16) Seek and obtain from courts civil penalties against any person who violates this chapter, the rules issued pursuant to this chapter, 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) Receive from state banking institutions applications
to change the locations of their principal offices and to
approve or disapprove these applications; and

(18) Take other action as he or she may consider neces-
sary to enforce and administer the provisions of this
chapter, except the provisions of article three of this
chapter, and all other laws which he or she is empowered
to administer and enforce and 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

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 25th Day of March, 2002.

Governor