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2003 MAR 28 P 4:45

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2003



# **ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR**

**House Bill No. 2480**

(By Delegates R. M. Thompson, Perry and G. White)



Passed March 8, 2003

In Effect Ninety Days from Passage

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FOR

**H. B. 2480**

(BY DELEGATES R. M. THOMPSON, PERRY AND G. WHITE)

[Passed March 8, 2003; 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 regulatory authority of the commissioner of banking over residential mortgage brokers and lenders and the commissioner's authority to assess civil administrative penalties and to expend funds to foster consumer understanding of mortgage laws.

*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.**

1           (a) Subject to the powers vested in the board by article three  
2 of this chapter, the commissioner has supervision and jurisdic-  
3 tion over state banks, regulated consumer lenders, residential  
4 mortgage lenders and brokers licensed pursuant to article  
5 seventeen, chapter thirty-one of this code, credit unions and all  
6 other persons now or hereafter made subject to his or her  
7 supervision or jurisdiction. All powers, duties, rights and  
8 privileges vested in the division are hereby vested in the  
9 commissioner. He or she shall be the chief executive officer of  
10 the division of banking and is responsible for the division's  
11 organization, services and personnel and for the orderly and  
12 efficient administration, enforcement and execution of the  
13 provisions of this chapter and all laws vesting authority or  
14 powers in or prescribing duties or functions for the division or  
15 the commissioner.

16           (b) The commissioner shall:

17           (1) Maintain an office for the division and there keep a  
18 complete record of all the division's transactions, of the  
19 financial conditions of all financial institutions and records of  
20 the activities of other persons as the commissioner considers  
21 important. Notwithstanding any other provision of this code,  
22 heretofore or hereafter enacted, the records relating to the  
23 financial condition of any financial institution and any informa-  
24 tion contained in the records shall be confidential for the use of  
25 the commissioner and authorized personnel of the division of  
26 banking. No person shall divulge any information contained in  
27 any records except as authorized in this subdivision in response  
28 to a valid subpoena or subpoena duces tecum issued pursuant to  
29 law in a criminal proceeding or in a civil enforcement action  
30 brought by the state or federal regulatory authorities. Subpoenas

31 shall first be directed to the commissioner, who shall authorize  
32 disclosure of relevant records and information from the records  
33 for good cause, upon imposing terms and conditions considered  
34 necessary to protect the confidential nature of the records, the  
35 financial integrity of the financial institution or the person to  
36 which the records relate, and the legitimate privacy interests of  
37 any individual named in the records. Conformity with federal  
38 procedures shall be sought where the institution maintains  
39 federal deposit insurance. The commissioner has and may  
40 exercise reasonable discretion as to the time, manner and extent  
41 the other records in his or her office and the information  
42 contained in the records are available for public examination;

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

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

49 (4) Require a criminal background investigation, including  
50 fingerprint checks, of each: (A) Applicant seeking approval to  
51 charter and/or control a state bank, state credit union, or a  
52 foreign bank state agency or representative office; (B) applicant  
53 seeking a license to engage in the business of money transmis-  
54 sion, currency exchange, or other activity regulated under  
55 article two, chapter thirty-two-a of this code; (C) applicant  
56 subject to the commissioner's supervision seeking a license to  
57 engage in the business of regulated consumer lending, mortgage  
58 lending or brokering; and (D) division of banking financial  
59 institutions regulatory employee applicant, to be made through  
60 the West Virginia state police and the federal bureau of  
61 investigation: *Provided*, That where the applicant is a company  
62 or entity already subject to supervision and regulation by the  
63 federal reserve board or other federal bank, thrift or credit union

64 regulator, or is a direct or indirect subsidiary of a company or  
65 entity subject to the supervision and regulation, or where the  
66 applicant is a company subject to the supervision and regulation  
67 of the federal securities and exchange commission whose stock  
68 is publicly traded on a registered exchange or through the  
69 national association of securities dealers automated quotation  
70 system, or the applicant is a direct or indirect subsidiary of such  
71 a company, the investigation into criminal background is not  
72 required. The provisions of this subdivision are not applicable  
73 to applicants seeking interim bank charters organized solely for  
74 the purpose of facilitating the acquisition of another bank  
75 pursuant to section five, article four of this chapter: *Provided,*  
76 *however,* That where a nonexempt applicant under this subdivi-  
77 sion is not a natural person, the principals of the applicant are  
78 subject to the requirements of this subdivision. As used in this  
79 subdivision, the term “principals” means the chief executive  
80 officer, regardless of title, managing partner if a partnership,  
81 members of the organizing group if no chief executive officer  
82 has yet been appointed, trustee or other person controlling the  
83 conduct of the affairs of a licensee. A person controlling ten  
84 percent or more of the stock of any corporate applicant shall be  
85 considered to be a principal under this provision.

86 (c) In addition to all other authority and powers vested in  
87 the commissioner by provisions of this chapter and other  
88 applicable laws, the commissioner may:

89 (1) Provide for the organization of the division and the  
90 procedures and practices of the division and implement the  
91 procedures and practices by the promulgation of rules and  
92 forms as appropriate and the rules shall be promulgated in  
93 accordance with article three, chapter twenty-nine-a of this  
94 code;

95 (2) Employ, direct, discipline, discharge and establish  
96 qualifications and duties for all personnel for the division,

97 including, but not limited to, examiners, assistant examiners,  
98 conservators and receivers, establish the amount and condition  
99 of bonds for the personnel he or she considers appropriate and  
100 pay the premiums on the bonds and, if he or she elects, have all  
101 personnel subject to and under the classified service of the state  
102 personnel division;

103 (3) Cooperate with organizations, agencies, committees and  
104 other representatives of financial institutions of the state in  
105 connection with schools, seminars, conferences and other  
106 meetings to improve the responsibilities, services and stability  
107 of the financial institutions;

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

112 (5) Call for and require any data, reports and information  
113 from financial institutions under his or her jurisdiction, at such  
114 times and in such form, content and detail considered necessary  
115 by him or her in the faithful discharge of his or her duties and  
116 responsibilities in the supervision of the financial institutions;

117 (6) Subject to the powers vested in the board by article  
118 three of this chapter, supervise the location, organization,  
119 practices and procedures of financial institutions and, without  
120 limitation on the general powers of supervision of financial  
121 institutions, require financial institutions to:

122 (A) Maintain their accounts consistent with rules prescribed  
123 by the commissioner and in accordance with generally accepted  
124 accounting practices;

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

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

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

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

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

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

136 (H) Maintain adequate insurance against other risks as he  
137 or she may determine to be necessary and appropriate for the  
138 protection of depositors and the public;

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

141 (J) Take other action that in his or her judgment is required  
142 of the institution in order to maintain its stability, integrity and  
143 security as required by law and all rules promulgated by him or  
144 her; and

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

146 (7) Subject to the powers vested in the board by article  
147 three of this chapter, receive from any person or persons and  
148 consider any request, petition or application relating to the  
149 organization, location, conduct, services, policies and proce-  
150 dures of any financial institution and to act on the request,  
151 petition or application in accordance with any provisions of law  
152 applicable thereto;

153 (8) In connection with the investigations required by  
154 subdivision (3), subsection (b) of this section, issue subpoenas

155 and subpoenas duces tecum, administer oaths, examine persons  
156 under oath, and hold and conduct hearings. Any subpoenas or  
157 subpoenas duces tecum shall be issued, served and enforced in  
158 the manner provided in section one, article five, chapter twenty-  
159 nine-a of this code. Any person appearing and testifying at a  
160 hearing may be accompanied by an attorney employed by him  
161 or her;

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

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

173 (11) Implement all of the provisions of this chapter, except  
174 the provisions of article three of this chapter, and all other laws  
175 which he or she is empowered to administer and enforce by the  
176 promulgation of rules in accordance with the provisions of  
177 article three, chapter twenty-nine-a of this code;

178 (12) Implement the provisions of chapter forty-six-a of this  
179 code applicable to consumer loans and consumer credit sales by  
180 the promulgation of rules in accordance with the provisions of  
181 article three, chapter twenty-nine-a of this code as long as the  
182 rules do not conflict with any rules promulgated by the state's  
183 attorney general;

184 (13) Foster and encourage a working relationship between  
185 the division of banking and financial institutions, credit,  
186 consumer, mercantile and other commercial and finance groups

187 and interests in the state in order to make current appraisals of  
188 the quality, stability and availability of the services and  
189 facilities of financial institutions;

190 (14) Provide to financial institutions and the public copies  
191 of the West Virginia statutes relating to financial institutions,  
192 suggested drafts of bylaws commonly used by financial  
193 institutions and any other forms and printed materials found by  
194 him or her to be helpful to financial institutions, their share-  
195 holders, depositors and patrons and make reasonable charges  
196 for the copies;

197 (15) Delegate the powers and duties of his or her office,  
198 other than the powers and duties excepted in this subdivision,  
199 to qualified division personnel who shall act under the direction  
200 and supervision of the commissioner and for whose acts he or  
201 she is responsible, but the commissioner may delegate to the  
202 deputy commissioner of banking and to no other division  
203 personnel the following powers, duties and responsibilities, all  
204 of which are hereby granted to and vested in the commissioner  
205 and for all of which the commissioner also is responsible. The  
206 commissioner shall:

207 (A) Order any person to cease violating any provision or  
208 provisions of this chapter or other applicable law or any rule  
209 promulgated or order issued thereunder;

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

213 (C) Revoke the certificate of authority, permit or license of  
214 any financial institution except a banking institution in accor-  
215 dance with the provisions of section thirteen of this article; and

216 (D) Accept an assurance in writing that the person will not  
217 in the future engage in the conduct alleged by the commissioner

218 to be unlawful, which could be subject to an order under the  
219 provisions of this chapter. This assurance of voluntary compli-  
220 ance shall not be considered an admission of violation for any  
221 purpose, except that if a person giving the assurance fails to  
222 comply with its terms, the assurance is prima facie evidence  
223 that prior to this assurance the person engaged in conduct  
224 described in the assurance;

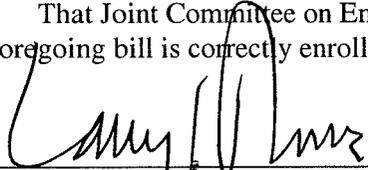
225 (16) Seek and obtain civil administrative penalties against  
226 any person who violates this chapter, the rules issued pursuant  
227 to this chapter, or any orders lawfully entered by the commis-  
228 sioner or board of banking and financial institutions in an  
229 amount not more than five thousand dollars per day for each  
230 violation: *Provided*, That, all of the pertinent provisions of  
231 article five, chapter twenty-nine-a of this code shall apply to  
232 any assessment of a penalty under this subsection;

233 (17) Receive from state banking institutions applications to  
234 change the locations of their principal offices and to approve or  
235 disapprove these applications;

236 (18) Expend funds in order to promote consumer awareness  
237 and understanding of issues related to residential mortgage  
238 lending; and

239 (19) Take other action as he or she may consider necessary  
240 to enforce and administer the provisions of this chapter, except  
241 the provisions of article three of this chapter, and all other laws  
242 which he or she is empowered to administer and enforce and  
243 apply to any court of competent jurisdiction for appropriate  
244 orders, writs, processes and remedies.

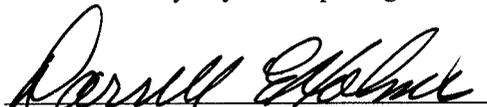
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

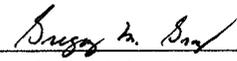
  
\_\_\_\_\_  
Chairman Senate Committee

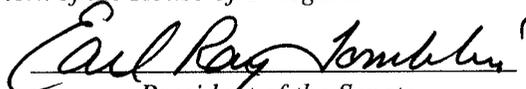
  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In 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 is approved this the 27<sup>th</sup>  
day of March, 2003.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/25/03

Time 9:35 AM