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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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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;

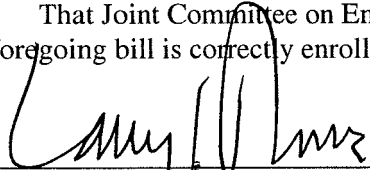
225 (16) Seek and obtain civil administrative penalties against
226 any person who violates this chapter, the rules issued pursuant
227 to this chapter, or any orders lawfully entered by the commis-
228 sioner or board of banking and financial institutions in an
229 amount not more than five thousand 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.



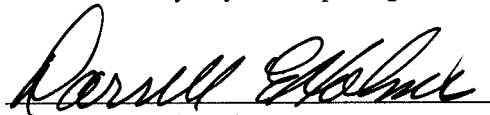
Chairman Senate Committee



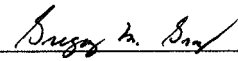
Chairman House Committee

Originating in the House.

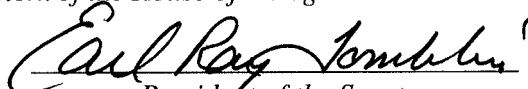
In effect ninety days from passage



Clerk of the Senate



Clerk of the House of Delegates

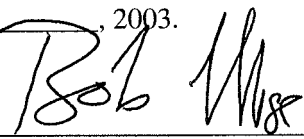


President of the Senate



Speaker of the House of Delegates

The within is approved this the 27th
day of March, 2003.



Governor

PRESENTED TO THE
GOVERNOR

Date 3/25/03

Time 9:35 AM