WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4291

(By Delegates Moore, Walter, Reynolds and Azinger)

Passed March 9, 2010
In Effect Ninety Days From Passage
AN ACT to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating to criminal background investigations for applicants seeking approval to engage in certain banking activities under the jurisdiction of the Commissioner of Banking; eliminating the requirement that the investigations be done through both the West Virginia State Police and the Federal Bureau of Investigation; providing that applicants provide fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check.

Be it enacted by the Legislature of West Virginia:

That §31A-2-4 of the Code of West Virginia, 1931, 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, residential mortgage lenders and brokers licensed pursuant to article seventeen, chapter thirty-one of this code, 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
Subpoenas shall first be directed to the commissioner, 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 requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check, 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: 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, however, 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 information from financial institutions under his or her jurisdiction, at such times and in such form, content and detail considered 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, 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 prescribed 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 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 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;

(15) 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 civil administrative 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 more than five thousand dollars per day for each violation: Provided, That all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to any assessment of a penalty under this subsection;
(17) Receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove these applications;

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

(19) Take other action as he or she may consider necessary 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.
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 16th day of December, 2010.

Governor