

HB 4291

FILED

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WEST VIRGINIA
SECRETARY OF STATE

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

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 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.

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§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
2 three of this chapter, the commissioner has supervision and
3 jurisdiction over state banks, regulated consumer lenders,
4 residential mortgage lenders and brokers licensed pursuant to
5 article seventeen, chapter thirty-one of this code, credit
6 unions and all other persons now or hereafter made subject to
7 his or her supervision or jurisdiction. All powers, duties,
8 rights and privileges vested in the division are hereby vested
9 in the commissioner. He or she shall be the chief executive
10 officer of the Division of Banking and is responsible for the
11 division's organization, services and personnel and for the
12 orderly and efficient administration, enforcement and
13 execution of the provisions of this chapter and all laws
14 vesting authority or powers in or prescribing duties or
15 functions for the division or 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
24 information contained in the records shall be confidential for
25 the use of the commissioner and authorized personnel of the
26 Division of Banking. No person shall divulge any information
27 contained in any records except as authorized in this
28 subdivision in response to a valid subpoena or subpoena
29 duces tecum issued pursuant to law in a criminal proceeding
30 or in a civil enforcement action brought by the state or

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

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

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

51 (4) Require a criminal background investigation,
52 including requiring fingerprints for submission to the Federal
53 Bureau of Investigation or any governmental agency or entity
54 authorized to receive such information for a state, national or
55 international criminal history check, of each: (A) Applicant
56 seeking approval to charter and/or control a state bank, state
57 credit union, or a foreign bank state agency or representative
58 office; (B) applicant seeking a license to engage in the
59 business of money transmission, currency exchange, or other
60 activity regulated under article two, chapter thirty-two-a of
61 this code; (C) applicant subject to the commissioner's
62 supervision seeking a license to engage in the business of
63 regulated consumer lending, mortgage lending or brokering;

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

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

95 (1) Provide for the organization of the division and the
96 procedures and practices of the division and implement the
97 procedures and practices by the promulgation of rules and

98 forms as appropriate and the rules shall be promulgated in
99 accordance with article three, chapter twenty-nine-a of this
100 code;

101 (2) Employ, direct, discipline, discharge and establish
102 qualifications and duties for all personnel for the division,
103 including, but not limited to, examiners, assistant examiners,
104 conservators and receivers, establish the amount and
105 condition of bonds for the personnel he or she considers
106 appropriate and pay the premiums on the bonds and, if he or
107 she elects, have all personnel subject to and under the
108 classified service of the state personnel division;

109 (3) Cooperate with organizations, agencies, committees
110 and other representatives of financial institutions of the state
111 in connection with schools, seminars, conferences and other
112 meetings to improve the responsibilities, services and
113 stability of the financial institutions;

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

118 (5) Call for and require any data, reports and information
119 from financial institutions under his or her jurisdiction, at
120 such times and in such form, content and detail considered
121 necessary by him or her in the faithful discharge of his or her
122 duties and responsibilities in the supervision of the financial
123 institutions;

124 (6) Subject to the powers vested in the board by article
125 three of this chapter, supervise the location, organization,
126 practices and procedures of financial institutions and, without
127 limitation on the general powers of supervision of financial
128 institutions, require financial institutions to:

129 (A) Maintain their accounts consistent with rules
130 prescribed by the commissioner and in accordance with
131 generally accepted accounting practices;

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

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

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

137 (E) Record or file writings creating or evidencing liens or
138 other interests in property;

139 (F) Obtain financial statements from prospective and
140 existing borrowers;

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

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

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

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

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

153 (7) Subject to the powers vested in the board by article
154 three of this chapter, receive from any person or persons and

155 consider any request, petition or application relating to the
156 organization, location, conduct, services, policies and
157 procedures of any financial institution and to act on the
158 request, petition or application in accordance with any
159 provisions of law applicable thereto;

160 (8) In connection with the investigations required by
161 subdivision (3), subsection (b) of this section, issue
162 subpoenas and subpoenas duces tecum, administer oaths,
163 examine persons under oath, and hold and conduct hearings.
164 Any subpoenas or subpoenas duces tecum shall be issued,
165 served and enforced in the manner provided in section one,
166 article five, chapter twenty-nine-a of this code. Any person
167 appearing and testifying at a hearing may be accompanied by
168 an attorney employed by him or her;

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

172 (10) Study and survey the location, size and services of
173 financial institutions, the geographic, industrial, economic
174 and population factors affecting the agricultural, commercial
175 and social life of the state and the needs for reducing,
176 expanding or otherwise modifying the services and facilities
177 of financial institutions in the various parts of the state and
178 compile and keep current data thereon to aid and guide him
179 or her in the administration of the duties of his or her office;

180 (11) Implement all of the provisions of this chapter,
181 except the provisions of article three of this chapter, and all
182 other laws which he or she is empowered to administer and

183 enforce by the promulgation of rules in accordance with the
184 provisions of article three, chapter twenty-nine-a of this code;

185 (12) Implement the provisions of chapter forty-six-a of
186 this code applicable to consumer loans and consumer credit
187 sales by the promulgation of rules in accordance with the
188 provisions of article three, chapter twenty-nine-a of this code
189 as long as the rules do not conflict with any rules
190 promulgated by the state's Attorney General;

191 (13) Foster and encourage a working relationship
192 between the Division of Banking and financial institutions,
193 credit, consumer, mercantile and other commercial and
194 finance groups and interests in the state in order to make
195 current appraisals of the quality, stability and availability of
196 the services and facilities of financial institutions;

197 (14) Provide to financial institutions and the public copies
198 of the West Virginia statutes relating to financial institutions,
199 suggested drafts of bylaws commonly used by financial
200 institutions and any other forms and printed materials found
201 by him or her to be helpful to financial institutions, their
202 shareholders, depositors and patrons and make reasonable
203 charges for the copies;

204 (15) Delegate the powers and duties of his or her office,
205 other than the powers and duties excepted in this subdivision,
206 to qualified division personnel who shall act under the
207 direction and supervision of the commissioner and for whose
208 acts he or she is responsible, but the commissioner may
209 delegate to the deputy commissioner of banking and to no
210 other division personnel the following powers, duties and

211 responsibilities, all of which are hereby granted to and vested
212 in the commissioner and for all of which the commissioner
213 also is responsible. The commissioner shall:

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

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

220 (C) Revoke the certificate of authority, permit or license
221 of any financial institution except a banking institution in
222 accordance with the provisions of section thirteen of this
223 article; and

224 (D) Accept an assurance in writing that the person will
225 not in the future engage in the conduct alleged by the
226 commissioner to be unlawful, which could be subject to an
227 order under the provisions of this chapter. This assurance of
228 voluntary compliance shall not be considered an admission
229 of violation for any purpose, except that if a person giving the
230 assurance fails to comply with its terms, the assurance is
231 prima facie evidence that prior to this assurance the person
232 engaged in conduct described in the assurance;

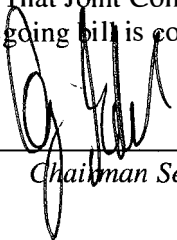
233 (16) Seek and obtain civil administrative penalties against
234 any person who violates this chapter, the rules issued
235 pursuant to this chapter, or any orders lawfully entered by the
236 commissioner or board of banking and financial institutions
237 in an amount not more than five thousand dollars per day for
238 each violation: *Provided*, That all of the pertinent provisions
239 of article five, chapter twenty-nine-a of this code shall apply
240 to any assessment of a penalty under this subsection;

241 (17) Receive from state banking institutions applications
242 to change the locations of their principal offices and to
243 approve or disapprove these applications;

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

247 (19) Take other action as he or she may consider
248 necessary to enforce and administer the provisions of this
249 chapter, except the provisions of article three of this chapter,
250 and all other laws which he or she is empowered to
251 administer and enforce and apply to any court of competent
252 jurisdiction for appropriate orders, writs, processes and
253 remedies.

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



Chairman Senate Committee



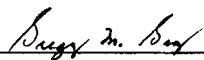
Chairman House Committee

Originating in the House.

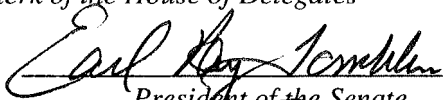
In effect ninety days from passage.



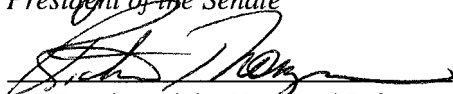
Clerk of the Senate



Clerk of the House of Delegates

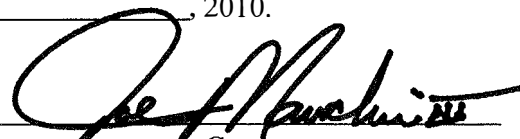


President of the Senate



Speaker of the House of Delegates

The within is approved this the 16th
day of December, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 13 2010

Time 11:40 pm