WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012

ENROLLED

Senate Bill No. 337
(By Senator Minard)

[Passed March 8, 2012; in effect ninety days from passage.]
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AN ACT to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the Commissioner of Banking; authorizing the Commissioner of Banking to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry, or other entities designated by the Nationwide Mortgage Licensing System and Registry, to collect and maintain records related to criminal background investigations and fingerprinting for persons subject to this subsection; providing that the Commissioner of Banking may use the Nationwide Mortgage Licensing System and Registry, or its designated vendor, as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency; providing that the Commissioner of Banking may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner; authorizing the Commissioner of Banking to conduct examinations of third-party providers of information technology services to financial institutions; creating a special revenue account to be known as the Consumer Education Fund, which may be expended by the commissioner to promote consumer awareness and understanding of issues related to residential
mortgage lending; providing that ten percent of all civil administrative penalties collected by the Division of Banking during each fiscal year shall be deposited into that account, which may be invested and retain all earnings and interest; and providing that at the end of each fiscal year, any remaining balance less than $500,000, including accrued interest, shall remain in the account and that any balance exceeding $500,000 shall revert to the General Revenue Fund.

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.

1 (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.

16 (b) The commissioner shall:

17 (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 sub-
poena 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 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 discre-
tion 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, includ-
ing 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 Institu-
tions 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 subdivi-
sion 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.
The commissioner may establish relationships or contracts
with the Nationwide Mortgage Licensing System and
Registry or other entities designated by the Nationwide
Mortgage Licensing System and Registry to collect and
maintain records related to criminal background investiga-
tions and fingerprints of persons subject to this subsection.
(A) To reduce the points of contact which the Federal Bureau of Investigation may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(B) To reduce the points of contact which the commissioner may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(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 and
any third-party vendor providing information technology services to 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 $5,000 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. In furtherance of this duty, there is established in the State Treasury a special revenue account to be known as the Consumer Education Fund, which shall be administered by the Commissioner of Banking. Ten
percent of all civil administrative penalties collected by the
Division of Banking during each fiscal year shall be depos-
ited into the fund and may be expended by the commissioner
to promote consumer awareness and understanding of issues
related to residential mortgage lending. The account shall be
a special revenue account, and may be invested and retain all
earnings and interest. Any remaining balance less than
$500,000, including accrued interest, in the fund at the end
of the fiscal year shall not revert to the General Revenue
Fund, but shall remain in the account. Any balance which
exceeds $500,000 as of June 30, 2012, and each year thereaf-
ter, shall revert to the General Revenue Fund; and

(19) 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 of the House of Delegates

The within ... approved ... this the 21st
Day of ... April ... 2012.

Governor