

H. B. 4248

(By Delegates Moore, Reynolds, Azinger and Mahan)
[Introduced January 20, 2012; referred to the
Committee on Banking and Insurance then the Judiciary.]

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10 A BILL to amend and reenact §31A-2-4 of the Code of West Virginia,
11 1931, as amended; relating to the powers and duties of the
12 Commissioner of Banking; authorizing the Commissioner of
13 Banking to establish relationships or contracts with the
14 Nationwide Mortgage Licensing System and Registry, or other
15 entities designated by the Nationwide Mortgage Licensing
16 System and Registry, to collect and maintain records related
17 to criminal background investigations and fingerprinting for
18 persons subject to this subsection; providing that the
19 Commissioner of Banking may use the Nationwide Mortgage
20 Licensing System and Registry, or its designated vendor, as a
21 channeling agent for requesting information from and
22 distributing information to the Department of Justice or any
23 governmental agency; providing that the Commissioner of
24 Banking may use the Nationwide Mortgage Licensing System and

1 Registry as a channeling agent for requesting and distributing
2 information to and from any source so directed by the
3 Commissioner; authorizing the Commissioner of Banking to
4 conduct examinations of third-party providers of information
5 technology services to financial institutions; and creating a
6 special revenue account to be known as the "Consumer
7 Education Fund", which may be expended by the commissioner to
8 promote consumer awareness and understanding of issues related
9 to residential mortgage lending; providing that ten percent of
10 all civil administrative penalties collected by the Division
11 of Banking during each fiscal year shall be deposited into
12 that account, which may be invested and retain all earnings
13 and interest; and providing that at the end of each fiscal
14 year, any remaining balance less than \$500,000, including
15 accrued interest, shall remain in the account and that any
16 balance exceeding \$500,000 shall revert to the General Revenue
17 Fund.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §31A-2-4 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

21 **ARTICLE 2. DIVISION OF BANKING.**

22 **§31A-2-4. Jurisdiction of commissioner; powers, etc., of division**
23 **transferred to commissioner; powers and duties of**

1 **commissioner.**

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

1 use of the commissioner and authorized personnel of the Division of
2 Banking. ~~No~~ A person ~~shall~~ may not divulge any information
3 contained in any records except as authorized in this subdivision
4 in response to a valid subpoena or subpoena duces tecum issued
5 pursuant to law in a criminal proceeding or in a civil enforcement
6 action brought by the state or federal regulatory authorities.
7 Subpoenas shall first be directed to the commissioner, who shall
8 authorize disclosure of relevant records and information from the
9 records for good cause, upon imposing terms and conditions
10 considered necessary to protect the confidential nature of the
11 records, the financial integrity of the financial institution or
12 the person to which the records relate, and the legitimate privacy
13 interests of any individual named in the records. Conformity with
14 federal procedures shall be sought where the institution maintains
15 federal deposit insurance. The commissioner has and may exercise
16 reasonable discretion as to the time, manner and extent the other
17 records in his or her office and the information contained in the
18 records are available for public examination;

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

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

1 (4) Require a criminal background investigation, including
2 requiring fingerprints for submission to the Federal Bureau of
3 Investigation or any governmental agency or entity authorized to
4 receive such information for a state, national or international
5 criminal history check, of each: (A) Applicant seeking approval to
6 charter and/or control a state bank, state credit union, or a
7 foreign bank state agency or representative office; (B) applicant
8 seeking a license to engage in the business of money transmission,
9 currency exchange, or other activity regulated under article two,
10 chapter thirty-two-a of this code; © applicant subject to the
11 commissioner's supervision seeking a license to engage in the
12 business of regulated consumer lending, mortgage lending or
13 brokering; and (D) Division of Banking Financial Institutions
14 regulatory employee applicant: *Provided*, That where the applicant
15 is a company or entity already subject to supervision and
16 regulation by the Federal Reserve Board or other federal bank,
17 thrift or credit union regulator, or is a direct or indirect
18 subsidiary of a company or entity subject to the supervision and
19 regulation, or where the applicant is a company subject to the
20 supervision and regulation of the federal securities and exchange
21 commission whose stock is publicly traded on a registered exchange
22 or through the national association of securities dealers automated
23 quotation system, or the applicant is a direct or indirect
24 subsidiary of such a company, the investigation into criminal

1 background is not required. The provisions of this subdivision are
2 not applicable to applicants seeking interim bank charters
3 organized solely for the purpose of facilitating the acquisition of
4 another bank pursuant to section five, article four of this
5 chapter: *Provided, however,* That where a nonexempt applicant under
6 this subdivision is not a natural person, the principals of the
7 applicant are subject to the requirements of this subdivision. As
8 used in this subdivision, the term "principals" means the chief
9 executive officer, regardless of title, managing partner if a
10 partnership, members of the organizing group if no chief executive
11 officer has yet been appointed, trustee or other person controlling
12 the conduct of the affairs of a licensee. A person controlling ten
13 percent or more of the stock of any corporate applicant shall be
14 considered to be a principal under this provision. The
15 commissioner may establish relationships or contracts with the
16 Nationwide Mortgage Licensing System and Registry or other entities
17 designated by the Nationwide Mortgage Licensing System and Registry
18 to collect and maintain records related to criminal background
19 investigations and fingerprints of persons subject to this
20 subsection.

21 (A) To reduce the points of contact which the Federal Bureau
22 of Investigation may have to maintain, the commissioner may use the
23 Nationwide Mortgage Licensing System and Registry or its designated
24 vendor as a channeling agent for requesting information from and

1 distributing information to the Department of Justice or any
2 governmental agency.

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

8 © In addition to all other authority and powers vested in the
9 commissioner by provisions of this chapter and other applicable
10 laws, the commissioner may:

11 (1) Provide for the organization of the division and the
12 procedures and practices of the division and implement the
13 procedures and practices by the promulgation of rules and forms as
14 appropriate and the rules shall be promulgated in accordance with
15 article three, chapter twenty-nine-a of this code;

16 (2) Employ, direct, discipline, discharge and establish
17 qualifications and duties for all personnel for the division,
18 including, but not limited to, examiners, assistant examiners,
19 conservators and receivers, establish the amount and condition of
20 bonds for the personnel he or she considers appropriate and pay the
21 premiums on the bonds and, if he or she elects, have all personnel
22 subject to and under the classified service of the state personnel
23 division;

24 (3) Cooperate with organizations, agencies, committees and

1 other representatives of financial institutions of the state in
2 connection with schools, seminars, conferences and other meetings
3 to improve the responsibilities, services and stability of the
4 financial institutions;

5 (4) In addition to the examinations required by section six of
6 this article, inspect, examine and audit the books, records,
7 accounts and papers of all financial institutions and any third-
8 party vendor providing information technology services to financial
9 institutions at such times as circumstances in his or her opinion
10 may warrant;

11 (5) Call for and require any data, reports and information
12 from financial institutions under his or her jurisdiction, at such
13 times and in such form, content and detail considered necessary by
14 him or her in the faithful discharge of his or her duties and
15 responsibilities in the supervision of the financial institutions;

16 (6) Subject to the powers vested in the board by article three
17 of this chapter, supervise the location, organization, practices
18 and procedures of financial institutions and, without limitation on
19 the general powers of supervision of financial institutions,
20 require financial institutions to:

21 (A) Maintain their accounts consistent with rules prescribed
22 by the commissioner and in accordance with generally accepted
23 accounting practices;

24 (B) Observe methods and standards which he or she may

1 prescribe for determining the value of various types of assets;

2 © Charge off the whole or any part of an asset which at the
3 time of his or her action could not lawfully be acquired;

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

5 (E) Record or file writings creating or evidencing liens or
6 other interests in property;

7 (F) Obtain financial statements from prospective and existing
8 borrowers;

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

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

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

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

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

21 (7) Subject to the powers vested in the board by article three
22 of this chapter, receive from any person or persons and consider
23 any request, petition or application relating to the organization,
24 location, conduct, services, policies and procedures of any

1 financial institution and to act on the request, petition or
2 application in accordance with any provisions of law applicable
3 thereto;

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

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

15 (10) Study and survey the location, size and services of
16 financial institutions, the geographic, industrial, economic and
17 population factors affecting the agricultural, commercial and
18 social life of the state and the needs for reducing, expanding or
19 otherwise modifying the services and facilities of financial
20 institutions in the various parts of the state and compile and keep
21 current data thereon to aid and guide him or her in the
22 administration of the duties of his or her office;

23 (11) Implement all of the provisions of this chapter, except
24 the provisions of article three of this chapter, and all other laws

1 which he or she is empowered to administer and enforce by the
2 promulgation of rules in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code;

4 (12) Implement the provisions of chapter forty-six-a of this
5 code applicable to consumer loans and consumer credit sales by the
6 promulgation of rules in accordance with the provisions of article
7 three, chapter twenty-nine-a of this code as long as the rules do
8 not conflict with any rules promulgated by the state's Attorney
9 General;

10 (13) Foster and encourage a working relationship between the
11 Division of Banking and financial institutions, credit, consumer,
12 mercantile and other commercial and finance groups and interests in
13 the state in order to make current appraisals of the quality,
14 stability and availability of the services and facilities of
15 financial institutions;

16 (14) Provide to financial institutions and the public copies
17 of the West Virginia statutes relating to financial institutions,
18 suggested drafts of bylaws commonly used by financial institutions
19 and any other forms and printed materials found by him or her to be
20 helpful to financial institutions, their shareholders, depositors
21 and patrons and make reasonable charges for the copies;

22 (15) Delegate the powers and duties of his or her office,
23 other than the powers and duties excepted in this subdivision, to
24 qualified division personnel who shall act under the direction and

1 supervision of the commissioner and for whose acts he or she is
2 responsible, but the commissioner may delegate to the deputy
3 commissioner of banking and to no other division personnel the
4 following powers, duties and responsibilities, all of which are
5 hereby granted to and vested in the commissioner and for all of
6 which the commissioner also is responsible. The commissioner shall:

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

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

13 © Revoke the certificate of authority, permit or license of
14 any financial institution except a banking institution in
15 accordance with the provisions of section thirteen of this article;
16 and

17 (D) Accept an assurance in writing that the person will not in
18 the future engage in the conduct alleged by the commissioner to be
19 unlawful, which could be subject to an order under the provisions
20 of this chapter. This assurance of voluntary compliance shall not
21 be considered an admission of violation for any purpose, except
22 that if a person giving the assurance fails to comply with its
23 terms, the assurance is prima facie evidence that prior to this
24 assurance the person engaged in conduct described in the assurance;

1 (16) Seek and obtain civil administrative penalties against
2 any person who violates this chapter, the rules issued pursuant to
3 this chapter, or any orders lawfully entered by the commissioner or
4 board of banking and financial institutions in an amount not more
5 than \$5,000 per day for each violation: *Provided*, That all of the
6 pertinent provisions of article five, chapter twenty-nine-a of this
7 code shall apply to any assessment of a penalty under this
8 subsection;

9 (17) Receive from state banking institutions applications to
10 change the locations of their principal offices and to approve or
11 disapprove these applications;

12 (18) Expend funds in order to promote consumer awareness and
13 understanding of issues related to residential mortgage lending.
14 In furtherance of this duty, there is established in the State
15 Treasury a special revenue account to be known as the "Consumer
16 Education Fund", which shall be administered by the Commissioner of
17 Banking. Ten percent of all civil administrative penalties
18 collected by the Division of Banking during each fiscal year shall
19 be deposited into the fund and may be expended by the commissioner
20 to promote consumer awareness and understanding of issues related
21 to residential mortgage lending. The account shall be a special
22 revenue account, and may be invested and retain all earnings and
23 interest. Any remaining balance less than \$500,000, including
24 accrued interest, in the fund at the end of the fiscal year shall

1 not revert to the General Revenue Fund, but shall remain in the
2 account. Any balance which exceeds \$500,000 as of June 30, 2012,
3 and each year thereafter, shall revert to the General Revenue Fund;
4 and

5 (19) Take other action as he or she may consider necessary to
6 enforce and administer the provisions of this chapter, except the
7 provisions of article three of this chapter, and all other laws
8 which he or she is empowered to administer and enforce and apply to
9 any court of competent jurisdiction for appropriate orders, writs,
10 processes and remedies.

NOTE: The purpose of this bill is to amend current law which limits the commissioner's ability to collect information pertaining to criminal background checks and fingerprinting for officers and principals of financial institutions to the West Virginia State Police and the Federal Bureau of Investigation, to allow the commissioner to also utilize the Nationwide Mortgage Licensing System as a channeling agent for requesting and distributing such information. It also provides that the Commissioner of Banking's authority to conduct examinations of financial institutions extends to third-party vendors that provide information technology services to those financial institutions. It also creates a special revenue fund to be administered by the Commissioner of Banking consisting of ten percent of all civil administrative penalties collected by the Division of Banking from regulated financial institutions during each fiscal year for use in the promotion of consumer awareness and understanding of issues related to residential mortgage lending.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.