

1 **ENROLLED**

2 **Senate Bill No. 337**

3 (BY SENATOR MINARD)

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5 [Passed March 8, 2012; in effect ninety days from passage.]  
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10 AN ACT 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

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

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

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

22 **ARTICLE 2. DIVISION OF BANKING.**

23 **§31A-2-4. Jurisdiction of commissioner; powers, etc., of division**

1                   **transferred to commissioner; powers and duties of**  
2                   **commissioner.**

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

17           (b) The commissioner shall:

18           (1) Maintain an office for the division and there keep a  
19 complete record of all the division's transactions, of the  
20 financial conditions of all financial institutions and records of  
21 the activities of other persons as the commissioner considers  
22 important. Notwithstanding any other provision of this code,  
23 heretofore or hereafter enacted, the records relating to the

1 financial condition of any financial institution and any  
2 information contained in the records shall be confidential for the  
3 use of the commissioner and authorized personnel of the Division of  
4 Banking. No person shall divulge any information contained in any  
5 records except as authorized in this subdivision in response to a  
6 valid subpoena or subpoena duces tecum issued pursuant to law in a  
7 criminal proceeding or in a civil enforcement action brought by the  
8 state or federal regulatory authorities. Subpoenas shall first be  
9 directed to the commissioner, who shall authorize disclosure of  
10 relevant records and information from the records for good cause,  
11 upon imposing terms and conditions considered necessary to protect  
12 the confidential nature of the records, the financial integrity of  
13 the financial institution or the person to which the records relate  
14 and the legitimate privacy interests of any individual named in the  
15 records. Conformity with federal procedures shall be sought where  
16 the institution maintains federal deposit insurance. The  
17 commissioner has and may exercise reasonable discretion as to the  
18 time, manner and extent the other records in his or her office and  
19 the information contained in the records are available for public  
20 examination;

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

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

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

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

1 subsection.

2           (A) To reduce the points of contact which the Federal Bureau  
3 of Investigation may have to maintain, the commissioner may use the  
4 Nationwide Mortgage Licensing System and Registry or its designated  
5 vendor as a channeling agent for requesting information from and  
6 distributing information to the Department of Justice or any  
7 governmental agency.

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

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

16           (1) Provide for the organization of the division and the  
17 procedures and practices of the division and implement the  
18 procedures and practices by the promulgation of rules and forms as  
19 appropriate and the rules shall be promulgated in accordance with  
20 article three, chapter twenty-nine-a of this code;

21           (2) Employ, direct, discipline, discharge and establish  
22 qualifications and duties for all personnel for the division,  
23 including, but not limited to, examiners, assistant examiners,

1 conservators and receivers, establish the amount and condition of  
2 bonds for the personnel he or she considers appropriate and pay the  
3 premiums on the bonds and, if he or she elects, have all personnel  
4 subject to and under the classified service of the state personnel  
5 division;

6       (3) Cooperate with organizations, agencies, committees and  
7 other representatives of financial institutions of the state in  
8 connection with schools, seminars, conferences and other meetings  
9 to improve the responsibilities, services and stability of the  
10 financial institutions;

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

17       (5) Call for and require any data, reports and information  
18 from financial institutions under his or her jurisdiction, at such  
19 times and in such form, content and detail considered necessary by  
20 him or her in the faithful discharge of his or her duties and  
21 responsibilities in the supervision of the financial institutions;

22       (6) Subject to the powers vested in the board by article three  
23 of this chapter, supervise the location, organization, practices

1 and procedures of financial institutions and, without limitation on  
2 the general powers of supervision of financial institutions,  
3 require financial institutions to:

4 (A) Maintain their accounts consistent with rules prescribed  
5 by the commissioner and in accordance with generally accepted  
6 accounting practices;

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

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

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

12 (E) Record or file writings creating or evidencing liens or  
13 other interests in property;

14 (F) Obtain financial statements from prospective and existing  
15 borrowers;

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

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

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

23 (J) Take other action that in his or her judgment is required

1 of the institution in order to maintain its stability, integrity  
2 and security as required by law and all rules promulgated by him or  
3 her; and

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

5 (7) Subject to the powers vested in the board by article three  
6 of this chapter, receive from any person or persons and consider  
7 any request, petition or application relating to the organization,  
8 location, conduct, services, policies and procedures of any  
9 financial institution and to act on the request, petition or  
10 application in accordance with any provisions of law applicable  
11 thereto;

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

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

23 (10) Study and survey the location, size and services of

1 financial institutions, the geographic, industrial, economic and  
2 population factors affecting the agricultural, commercial and  
3 social life of the state and the needs for reducing, expanding or  
4 otherwise modifying the services and facilities of financial  
5 institutions in the various parts of the state and compile and keep  
6 current data thereon to aid and guide him or her in the  
7 administration of the duties of his or her office;

8       (11) Implement all of the provisions of this chapter, except  
9 the provisions of article three of this chapter, and all other laws  
10 which he or she is empowered to administer and enforce by the  
11 promulgation of rules in accordance with the provisions of article  
12 three, chapter twenty-nine-a of this code;

13       (12) Implement the provisions of chapter forty-six-a of this  
14 code applicable to consumer loans and consumer credit sales by the  
15 promulgation of rules in accordance with the provisions of article  
16 three, chapter twenty-nine-a of this code as long as the rules do  
17 not conflict with any rules promulgated by the state's Attorney  
18 General;

19       (13) Foster and encourage a working relationship between the  
20 Division of Banking and financial institutions, credit, consumer,  
21 mercantile and other commercial and finance groups and interests in  
22 the state in order to make current appraisals of the quality,  
23 stability and availability of the services and facilities of

1 financial institutions;

2       (14) Provide to financial institutions and the public copies  
3 of the West Virginia statutes relating to financial institutions,  
4 suggested drafts of bylaws commonly used by financial institutions  
5 and any other forms and printed materials found by him or her to be  
6 helpful to financial institutions, their shareholders, depositors  
7 and patrons and make reasonable charges for the copies;

8       (15) Delegate the powers and duties of his or her office,  
9 other than the powers and duties excepted in this subdivision, to  
10 qualified division personnel who shall act under the direction and  
11 supervision of the commissioner and for whose acts he or she is  
12 responsible, but the commissioner may delegate to the deputy  
13 commissioner of banking and to no other division personnel the  
14 following powers, duties and responsibilities, all of which are  
15 hereby granted to and vested in the commissioner and for all of  
16 which the commissioner also is responsible. The commissioner  
17 shall:

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

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

1 (C) Revoke the certificate of authority, permit or license of  
2 any financial institution except a banking institution in  
3 accordance with the provisions of section thirteen of this article;  
4 and

5 (D) Accept an assurance in writing that the person will not in  
6 the future engage in the conduct alleged by the commissioner to be  
7 unlawful, which could be subject to an order under the provisions  
8 of this chapter. This assurance of voluntary compliance shall not  
9 be considered an admission of violation for any purpose, except  
10 that if a person giving the assurance fails to comply with its  
11 terms, the assurance is prima facie evidence that prior to this  
12 assurance the person engaged in conduct described in the assurance;

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

21 (17) Receive from state banking institutions applications to  
22 change the locations of their principal offices and to approve or  
23 disapprove these applications;

1           (18) Expend funds in order to promote consumer awareness and  
2 understanding of issues related to residential mortgage lending.  
3 In furtherance of this duty, there is established in the State  
4 Treasury a special revenue account to be known as the Consumer  
5 Education Fund, which shall be administered by the Commissioner of  
6 Banking. Ten percent of all civil administrative penalties  
7 collected by the Division of Banking during each fiscal year shall  
8 be deposited into the fund and may be expended by the commissioner  
9 to promote consumer awareness and understanding of issues related  
10 to residential mortgage lending. The account shall be a special  
11 revenue account, and may be invested and retain all earnings and  
12 interest. Any remaining balance less than \$500,000, including  
13 accrued interest, in the fund at the end of the fiscal year shall  
14 not revert to the General Revenue Fund, but shall remain in the  
15 account. Any balance which exceeds \$500,000 as of June 30, 2012,  
16 and each year thereafter, shall revert to the General Revenue Fund;  
17 and

18           (19) Take other action as he or she may consider necessary to  
19 enforce and administer the provisions of this chapter, except the  
20 provisions of article three of this chapter, and all other laws  
21 which he or she is empowered to administer and enforce and apply to  
22 any court of competent jurisdiction for appropriate orders, writs,  
23 processes and remedies.

