

ENROLLED

Senate Bill No. 337

(BY SENATOR MINARD)

[Passed March 8, 2012; 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 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
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
5 to article seventeen, chapter thirty-one of this code, credit
6 unions and all other persons now or hereafter made subject
7 to 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
20 of the activities of other persons as the commissioner

21 considers important. Notwithstanding any other provision of
22 this code, heretofore or hereafter enacted, the records
23 relating to the financial condition of any financial institution
24 and any information contained in the records shall be
25 confidential for the use of the commissioner and authorized
26 personnel of the Division of Banking. No person shall
27 divulge any information contained in any records except as
28 authorized in this subdivision in response to a valid sub-
29 poena or subpoena duces tecum issued pursuant to law in a
30 criminal proceeding or in a civil enforcement action brought
31 by the state or federal regulatory authorities. Subpoenas
32 shall first be directed to the commissioner, who shall
33 authorize disclosure of relevant records and information
34 from the records for good cause, upon imposing terms and
35 conditions considered necessary to protect the confidential
36 nature of the records, the financial integrity of the financial
37 institution or the person to which the records relate and the
38 legitimate privacy interests of any individual named in the
39 records. Conformity with federal procedures shall be sought
40 where the institution maintains federal deposit insurance.
41 The commissioner has and may exercise reasonable discre-
42 tion as to the time, manner and extent the other records in
43 his or her office and the information contained in the records
44 are available for public 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, includ-
52 ing requiring fingerprints for submission to the Federal
53 Bureau of Investigation or any governmental agency or
54 entity authorized to receive such information for a state,
55 national or international criminal history check, of each: (A)
56 Applicant seeking approval to charter and/or control a state
57 bank, state credit union or a foreign bank state agency or
58 representative office; (B) applicant seeking a license to

59 engage in the business of money transmission, currency
60 exchange or other activity regulated under article two,
61 chapter thirty-two-a of this code; (C) applicant subject to the
62 commissioner's supervision seeking a license to engage in the
63 business of regulated consumer lending, mortgage lending or
64 brokering; and (D) Division of Banking Financial Institu-
65 tions regulatory employee applicant: *Provided*, That where
66 the applicant is a company or entity already subject to
67 supervision and regulation by the Federal Reserve Board or
68 other federal bank, thrift or credit union regulator, or is a
69 direct or indirect subsidiary of a company or entity subject
70 to the supervision and regulation, or where the applicant is
71 a company subject to the supervision and regulation of the
72 federal Securities and Exchange Commission whose stock is
73 publicly traded on a registered exchange or through the
74 National Association of Securities Dealers automated
75 quotation system, or the applicant is a direct or indirect
76 subsidiary of such a company, the investigation into criminal
77 background is not required. The provisions of this subdivi-
78 sion are not applicable to applicants seeking interim bank
79 charters organized solely for the purpose of facilitating the
80 acquisition of another bank pursuant to section five, article
81 four of this chapter: *Provided, however*, That where a
82 nonexempt applicant under this subdivision is not a natural
83 person, the principals of the applicant are subject to the
84 requirements of this subdivision. As used in this subdivision,
85 the term "principals" means the chief executive officer,
86 regardless of title, managing partner if a partnership,
87 members of the organizing group if no chief executive officer
88 has yet been appointed, trustee or other person controlling
89 the conduct of the affairs of a licensee. A person controlling
90 ten percent or more of the stock of any corporate applicant
91 shall be considered to be a principal under this provision.
92 The commissioner may establish relationships or contracts
93 with the Nationwide Mortgage Licensing System and
94 Registry or other entities designated by the Nationwide
95 Mortgage Licensing System and Registry to collect and
96 maintain records related to criminal background investiga-
97 tions and fingerprints of persons subject to this subsection.

98 (A) To reduce the points of contact which the Federal
99 Bureau of Investigation may have to maintain, the commis-
100 sioner may use the Nationwide Mortgage Licensing System
101 and Registry or its designated vendor as a channeling agent
102 for requesting information from and distributing information
103 to the Department of Justice or any governmental agency.

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

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

112 (1) Provide for the organization of the division and the
113 procedures and practices of the division and implement the
114 procedures and practices by the promulgation of rules and
115 forms as appropriate and the rules shall be promulgated in
116 accordance with article three, chapter twenty-nine-a of this
117 code;

118 (2) Employ, direct, discipline, discharge and establish
119 qualifications and duties for all personnel for the division,
120 including, but not limited to, examiners, assistant examiners,
121 conservators and receivers, establish the amount and
122 condition of bonds for the personnel he or she considers
123 appropriate and pay the premiums on the bonds and, if he or
124 she elects, have all personnel subject to and under the
125 classified service of the state personnel division;

126 (3) Cooperate with organizations, agencies, committees
127 and other representatives of financial institutions of the state
128 in connection with schools, seminars, conferences and other
129 meetings to improve the responsibilities, services and
130 stability of the financial institutions;

131 (4) In addition to the examinations required by section
132 six of this article, inspect, examine and audit the books,
133 records, accounts and papers of all financial institutions and

134 any third-party vendor providing information technology
135 services to financial institutions at such times as circum-
136 stances in his or her opinion may warrant;

137 (5) Call for and require any data, reports and information
138 from financial institutions under his or her jurisdiction, at
139 such times and in such form, content and detail considered
140 necessary by him or her in the faithful discharge of his or her
141 duties and responsibilities in the supervision of the financial
142 institutions;

143 (6) Subject to the powers vested in the board by article
144 three of this chapter, supervise the location, organization,
145 practices and procedures of financial institutions and,
146 without limitation on the general powers of supervision of
147 financial institutions, require financial institutions to:

148 (A) Maintain their accounts consistent with rules
149 prescribed by the commissioner and in accordance with
150 generally accepted accounting practices;

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

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

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

156 (E) Record or file writings creating or evidencing liens or
157 other interests in property;

158 (F) Obtain financial statements from prospective and
159 existing borrowers;

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

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

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

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

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

172 (7) Subject to the powers vested in the board by article
173 three of this chapter, receive from any person or persons and
174 consider any request, petition or application relating to the
175 organization, location, conduct, services, policies and
176 procedures of any financial institution and to act on the
177 request, petition or application in accordance with any
178 provisions of law applicable thereto;

179 (8) In connection with the investigations required by
180 subdivision (3), subsection (b) of this section, issue subpoenas
181 and subpoenas duces tecum, administer oaths, examine
182 persons under oath, and hold and conduct hearings. Any
183 subpoenas or subpoenas duces tecum shall be issued, served
184 and enforced in the manner provided in section one, article
185 five, chapter twenty-nine-a of this code. Any person appear-
186 ing and testifying at a hearing may be accompanied by an
187 attorney employed by him or her;

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

191 (10) Study and survey the location, size and services of
192 financial institutions, the geographic, industrial, economic
193 and population factors affecting the agricultural, commercial
194 and social life of the state and the needs for reducing,
195 expanding or otherwise modifying the services and facilities
196 of financial institutions in the various parts of the state and
197 compile and keep current data thereon to aid and guide him
198 or her in the administration of the duties of his or her office;

199 (11) Implement all of the provisions of this chapter,
200 except the provisions of article three of this chapter, and all
201 other laws which he or she is empowered to administer and
202 enforce by the promulgation of rules in accordance with the
203 provisions of article three, chapter twenty-nine-a of this
204 code;

205 (12) Implement the provisions of chapter forty-six-a of
206 this code applicable to consumer loans and consumer credit
207 sales by the promulgation of rules in accordance with the
208 provisions of article three, chapter twenty-nine-a of this
209 code as long as the rules do not conflict with any rules
210 promulgated by the state's Attorney General;

211 (13) Foster and encourage a working relationship
212 between the Division of Banking and financial institutions,
213 credit, consumer, mercantile and other commercial and
214 finance groups and interests in the state in order to make
215 current appraisals of the quality, stability and availability of
216 the services and facilities of financial institutions;

217 (14) Provide to financial institutions and the public
218 copies of the West Virginia statutes relating to financial
219 institutions, suggested drafts of bylaws commonly used by
220 financial institutions and any other forms and printed
221 materials found by him or her to be helpful to financial
222 institutions, their shareholders, depositors and patrons and
223 make reasonable charges for the copies;

224 (15) Delegate the powers and duties of his or her office,
225 other than the powers and duties excepted in this subdivi-
226 sion, to qualified division personnel who shall act under the
227 direction and supervision of the commissioner and for whose
228 acts he or she is responsible, but the commissioner may
229 delegate to the deputy commissioner of banking and to no
230 other division personnel the following powers, duties and
231 responsibilities, all of which are hereby granted to and
232 vested in the commissioner and for all of which the commis-
233 sioner also is responsible. The commissioner shall:

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

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

240 (C) Revoke the certificate of authority, permit or license
241 of any financial institution except a banking institution in
242 accordance with the provisions of section thirteen of this
243 article; and

244 (D) Accept an assurance in writing that the person will
245 not in the future engage in the conduct alleged by the
246 commissioner to be unlawful, which could be subject to an
247 order under the provisions of this chapter. This assurance of
248 voluntary compliance shall not be considered an admission
249 of violation for any purpose, except that if a person giving
250 the assurance fails to comply with its terms, the assurance is
251 prima facie evidence that prior to this assurance the person
252 engaged in conduct described in the assurance;

253 (16) Seek and obtain civil administrative penalties
254 against any person who violates this chapter, the rules issued
255 pursuant to this chapter, or any orders lawfully entered by
256 the commissioner or board of banking and financial institu-
257 tions in an amount not more than \$5,000 per day for each
258 violation: *Provided*, That all of the pertinent provisions of
259 article five, chapter twenty-nine-a of this code shall apply to
260 any assessment of a penalty under this subsection;

261 (17) Receive from state banking institutions applications
262 to change the locations of their principal offices and to
263 approve or disapprove these applications;

264 (18) Expend funds in order to promote consumer aware-
265 ness and understanding of issues related to residential
266 mortgage lending. In furtherance of this duty, there is
267 established in the State Treasury a special revenue account
268 to be known as the Consumer Education Fund, which shall
269 be administered by the Commissioner of Banking. Ten

270 percent of all civil administrative penalties collected by the
271 Division of Banking during each fiscal year shall be depos-
272 ited into the fund and may be expended by the commissioner
273 to promote consumer awareness and understanding of issues
274 related to residential mortgage lending. The account shall be
275 a special revenue account, and may be invested and retain all
276 earnings and interest. Any remaining balance less than
277 \$500,000, including accrued interest, in the fund at the end
278 of the fiscal year shall not revert to the General Revenue
279 Fund, but shall remain in the account. Any balance which
280 exceeds \$500,000 as of June 30, 2012, and each year thereaf-
281 ter, shall revert to the General Revenue Fund; and

282 (19) Take other action as he or she may consider neces-
283 sary to enforce and administer the provisions of this chapter,
284 except the provisions of article three of this chapter, and all
285 other laws which he or she is empowered to administer and
286 enforce and apply to any court of competent jurisdiction for
287 appropriate orders, writs, processes and remedies.