

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2621**

BY DELEGATES NELSON, CRISS, ESPINOSA AND

PORTERFIELD

[Introduced January 24, 2019; Referred  
to the Committee on Banking and Insurance then the  
Judiciary.]

1 A BILL to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating  
2 to background checks of certain financial institutions; changing the Division of Banking to  
3 Division of Financial Institutions; allowing commissioner to accept alternate report forms  
4 in limited circumstances for certain non-United States-based principals or owners; and  
5 making technical corrections.

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

**ARTICLE 2. DIVISION OF ~~BANKING~~ FINANCIAL INSTITUTIONS.**

**§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 §31a-3-1 *et seq.* of this code, the  
2 commissioner has supervision and jurisdiction over state banks, regulated consumer lenders,  
3 residential mortgage lenders and brokers licensed pursuant to §31-17-1 *et seq.* of this code, credit  
4 unions and all other persons now or hereafter made subject to his or her supervision or  
5 jurisdiction. All powers, duties, rights and privileges vested in the division are hereby vested in  
6 the commissioner. He or she shall be the chief executive officer of the Division of ~~Banking~~  
7 Financial Institutions and is responsible for the division's organization, services and personnel  
8 and for the orderly and efficient administration, enforcement and execution of the provisions of  
9 this chapter and all laws vesting authority or powers in or prescribing duties or functions for the  
10 division or the commissioner.

11 (b) The commissioner shall:

12 (1) Maintain an office for the division and there keep a complete record of all the division's  
13 transactions, of the financial conditions of all financial institutions and records of the activities of  
14 other persons as the commissioner considers important. Notwithstanding any other provision of  
15 this code, heretofore or hereafter enacted, the records relating to the financial condition of any  
16 financial institution and any information contained in the records shall be confidential for the use  
17 of the commissioner and authorized personnel of the Division of ~~Banking~~ Financial Institutions.

18 No person ~~shall~~ may divulge any information contained in any records except as authorized in  
19 this subdivision in response to a valid subpoena or subpoena duces tecum issued pursuant to  
20 law in a criminal proceeding or in a civil enforcement action brought by the state or federal  
21 regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize  
22 disclosure of relevant records and information from the records for good cause, upon imposing  
23 terms and conditions considered necessary to protect the confidential nature of the records, the  
24 financial integrity of the financial institution or the person to which the records relate and the  
25 legitimate privacy interests of any individual named in the records. Conformity with federal  
26 procedures shall be sought where the institution maintains federal deposit insurance. The  
27 commissioner has and may exercise reasonable discretion as to the time, manner and extent the  
28 other records in his or her office and the information contained in the records are available for  
29 public examination;

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

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

34 (4) Require a criminal background investigation, including requiring fingerprints for  
35 submission to the Federal Bureau of Investigation or any governmental agency or entity  
36 authorized to receive such information for a state, national or international criminal history check,  
37 of each: (A) Applicant seeking approval to charter and/or control a state bank, state credit union  
38 or a foreign bank state agency or representative office; (B) applicant seeking a license to engage  
39 in the business of money transmission, currency exchange or other activity regulated under §32A-  
40 2-1 *et seq.* of this code; (C) applicant subject to the commissioner's supervision seeking a license  
41 to engage in the business of regulated consumer lending, mortgage lending or brokering; and (D)  
42 Division of Banking Financial Institutions regulatory employee applicant: *Provided*, That where  
43 the applicant is a company or entity already subject to supervision and regulation by the Federal

44 Reserve Board or other federal bank, thrift or credit union regulator, or is a direct or indirect  
45 subsidiary of a company or entity subject to the supervision and regulation, or where the applicant  
46 is a company subject to the supervision and regulation of the federal Securities and Exchange  
47 Commission whose stock is publicly traded on a registered exchange or through the National  
48 Association of Securities Dealers automated quotation system, or the applicant is a direct or  
49 indirect subsidiary of such a company, the investigation into criminal background is not required.  
50 The provisions of this subdivision are not applicable to applicants seeking interim bank charters  
51 organized solely for the purpose of facilitating the acquisition of another bank pursuant to §31A-  
52 4-5 of this code: *Provided, however,* That where a nonexempt applicant under this subdivision is  
53 not a natural person, the principals of the applicant are subject to the requirements of this  
54 subdivision. As used in this subdivision, the term “principals” means the chief executive officer,  
55 regardless of title, managing partner if a partnership, members of the organizing group if no chief  
56 executive officer has yet been appointed, trustee or other person controlling the conduct of the  
57 affairs of a licensee. A person controlling 10 percent or more of the stock of any corporate  
58 applicant shall be considered to be a principal under this provision. The commissioner may  
59 establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry  
60 or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect  
61 and maintain records related to criminal background investigations and fingerprints of persons  
62 subject to this subsection.

63 Notwithstanding any other provision of this code to the contrary, the commissioner may  
64 determine alternate acceptable forms for background check information for direct or indirect  
65 principals of a licensee or applicant for a mortgage lender or broker license or a money  
66 transmission license who are not residents of the United States: *Provided,* That this provision  
67 applies only when the licensee or applicant has owners or principals who are residents of the  
68 United States and the division has been provided adequate background information, as provided  
69 in subdivision (b) of this section, for such owners or principals of the licensee or applicant who

70 are United States residents.

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

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

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

81 (1) Provide for the organization of the division and the procedures and practices of the  
82 division and implement the procedures and practices by the promulgation of rules and forms as  
83 appropriate and the rules shall be promulgated in accordance with §29A-3-1 *et seq.* of this code;

84 (2) Employ, direct, discipline, discharge and establish qualifications and duties for all  
85 personnel for the division, including, but not limited to, examiners, assistant examiners,  
86 conservators and receivers, establish the amount and condition of bonds for the personnel he or  
87 she considers appropriate and pay the premiums on the bonds and, if he or she elects, have all  
88 personnel subject to and under the classified service of the state personnel division;

89 (3) Cooperate with organizations, agencies, committees and other representatives of  
90 financial institutions of the state in connection with schools, seminars, conferences and other  
91 meetings to improve the responsibilities, services and stability of the financial institutions;

92 (4) In addition to the examinations required by §31A-2-6 of this code, inspect, examine  
93 and audit the books, records, accounts and papers of all financial institutions and any third-party  
94 vendor providing information technology services to financial institutions at such times as  
95 circumstances in his or her opinion may warrant;

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

100 (6) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, supervise  
101 the location, organization, practices and procedures of financial institutions and, without limitation  
102 on the general powers of supervision of financial institutions, require financial institutions to:

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

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

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

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

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

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

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

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

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

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

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

121 (7) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, receive

122 from any person or persons and consider any request, petition or application relating to the  
123 organization, location, conduct, services, policies and procedures of any financial institution and  
124 to act on the request, petition or application in accordance with any provisions of law applicable  
125 thereto;

126 (8) In connection with the investigations required by subdivision (3), subsection (b) of this  
127 section, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under  
128 oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued,  
129 served and enforced in the manner provided in §29A-5-1 of this code. Any person appearing and  
130 testifying at a hearing may be accompanied by an attorney employed by him or her;

131 (9) Issue declaratory rulings in accordance with ~~the provisions of~~ §29A-4-1 of this code;

132 (10) Study and survey the location, size and services of financial institutions, the  
133 geographic, industrial, economic and population factors affecting the agricultural, commercial and  
134 social life of the state and the needs for reducing, expanding or otherwise modifying the services  
135 and facilities of financial institutions in the various parts of the state and compile and keep current  
136 data thereon to aid and guide him or her in the administration of the duties of his or her office;

137 (11) Implement all of the provisions of this chapter, except the provisions of article three  
138 of this chapter, and all other laws which he or she is empowered to administer and enforce by the  
139 promulgation of rules in accordance with ~~the provisions of~~ §29A-3-1 *et seq.* of this code;

140 (12) Implement the provisions of chapter 46A of this code applicable to consumer loans  
141 and consumer credit sales by the promulgation of rules in accordance with ~~the provisions of~~ §29A-  
142 3-1 *et seq.* of this code as long as the rules do not conflict with any rules promulgated by the  
143 state's Attorney General;

144 (13) Foster and encourage a working relationship between the Division of ~~Banking~~  
145 Financial Institutions, credit, consumer, mercantile and other commercial and finance groups and  
146 interests in the state in order to make current appraisals of the quality, stability and availability of  
147 the services and facilities of financial institutions;

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

152 (15) Delegate the powers and duties of his or her office, other than the powers and duties  
153 excepted in this subdivision, to qualified division personnel who shall act under the direction and  
154 supervision of the commissioner and for whose acts he or she is responsible, but the  
155 commissioner may delegate to the deputy commissioner of banking and to no other division  
156 personnel the following powers, duties and responsibilities, all of which are hereby granted to and  
157 vested in the commissioner and for all of which the commissioner also is responsible. The  
158 commissioner shall:

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

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

163 (C) Revoke the certificate of authority, permit or license of any financial institution except  
164 a banking institution in accordance with ~~the provisions of~~ §31A-2-13 of this code; and

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

171 (16) Seek and obtain civil administrative penalties against any person who violates this  
172 chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the  
173 commissioner or board of banking and financial institutions in an amount not more than \$5,000



174 per day for each violation: *Provided*, That all of the pertinent provisions of §29A-5-1 *et seq.* of this  
175 code shall apply to any assessment of a penalty under this subsection;

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

178 (18) Expend funds in order to promote consumer awareness and understanding of issues  
179 related to residential mortgage lending. In furtherance of this duty, there is established in the State  
180 Treasury a special revenue account to be known as the Consumer Education Fund, which shall  
181 be administered by the Commissioner of ~~Banking~~Financial Institutions. Ten percent of all civil  
182 administrative penalties collected by the Division of ~~Banking~~Financial Institutions during each  
183 fiscal year shall be deposited into the fund and may be expended by the commissioner to promote  
184 consumer awareness and understanding of issues related to residential mortgage lending. The  
185 account shall be a special revenue account, and may be invested and retain all earnings and  
186 interest. Any remaining balance less than \$500,000, including accrued interest, in the fund at the  
187 end of the fiscal year shall not revert to the General Revenue Fund, but shall remain in the  
188 account. Any balance which exceeds \$500,000 as of June 30, 2012, and each year thereafter,  
189 shall revert to the General Revenue Fund; and

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

NOTE: The purpose of this bill is to grant flexibility to the commissioner in the administration of the licensing programs for mortgage lending and brokering as well as money transmission by clarifying who must submit official criminal history information and to facilitate effective and efficient review of license applications. The bill also changes the Division of Banking to Division of Financial Institutions.

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