

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4780**

By Delegates Criss and Barnhart

[Introduced January 16, 2024; Referred to the  
Committee on Banking and Insurance then  
Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended; to amend and reenact §5F-2-1 of  
2 said code; to amend said code by adding thereto two new sections designated §5F-2-1b  
3 and §5F-2-9; to amend and reenact to amend and reenact §31A-2-2, §31A-2-3, §31A-2-4,  
4 §31A-2-4a, §31A-2-4b, §31A-2-4c, §31A-2-5, §31A-2-6, §31A-2-7, §31A-2-8, §31A-2-9,  
5 §31A-2-12, §31A-2-14; §31A-3-1 and §31A-3-2 of said code, all relating to reorganizing  
6 the Board of Banking and Financial Institutions, the Division of Financial Institutions, and  
7 the Lending and Credit Rate Board into independent divisions and boards of the executive  
8 branch beginning January 1, 2025; removing references to the former Department of  
9 Banking; designating the Board of Banking and Financial Institutions as the chief executive  
10 body under the reorganization structure; providing the Division of Financial Institutions and  
11 Lending and Credit Rate Board with oversight and supervision by the Board of Banking  
12 and Financial Institutions; requiring the Board of Banking and Financial Institutions to  
13 approve any policy decision, proposed budget, or personnel-related decision of the  
14 Division of Financial Institutions; exempting the Division of Financial Institutions from the  
15 classified service system; establishing a merit-based system for personnel administration  
16 for the Division of Financial Institutions; authorizing the commissioner to establish merit-  
17 based system; authorizing current employees to opt into classified-exempt system in  
18 writing; authorizing the commissioner as chairman of the Board of Banking and Financial  
19 Institutions to vote only in instances of a tie; requiring the Board of Banking and Financial  
20 Institutions to meet bi-monthly; increasing the experience qualifications of the  
21 commissioner and deputy commissioner; providing uniformity in code to references of  
22 National Multistate Licensing System and Registry; providing requirements for the  
23 commissioner's merit-based policy for employment positions; authorizing the  
24 commissioner to employ additional support staff; exempting rules promulgated by the  
25 Division of Financial Institutions from legislative approval and providing approval by the  
26 Board of Banking and Financial Institutions; authorizing the commissioner's examination

27 fund to become a revolving fund; and requiring the commissioner to return ten percent of  
 28 total revenue collected by the commissioner to the General Revenue Fund of the State  
 29 Treasury.

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

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF  
 STATE GOVERNMENT.**

**ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

**§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

1 (a) The following agencies and boards, including all of the allied, advisory, affiliated, or  
 2 related entities and funds associated with any agency or board, are incorporated in and  
 3 administered as a part of the Department of Administration:

- 4 (1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;
- 5 (2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;
- 6 (3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;
- 7 (4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this  
 8 code;
- 9 (5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;
- 10 (6) Boundary Commission provided in §29-23-1 *et seq.* of this code;
- 11 (7) Public Defender Services provided in §29-21-1 *et seq.* of this code;
- 12 (8) Division of Personnel provided in §29-6-1 *et seq.* of this code;
- 13 (9) West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;
- 14 (10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and
- 15 (11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

16 (b) The following agencies and boards, including all of the allied, advisory, affiliated, or  
 17 related entities and funds associated with any agency or board, are incorporated in and

18 administered as a part of the Department of Commerce:

19 (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

20 (A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of  
21 this code; and

22 (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of  
23 this code.

24 (2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code.

25 The following boards are transferred to the Office of Miners' Health, Safety, and Training for  
26 purposes of administrative support and liaison with the Office of the Governor:

27 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review  
28 Committee provided in §22A-6-1 *et seq.* of this code;

29 (B) Board of Miner Training, Education, and Certification provided in §22A-7-1 *et seq.* of  
30 this code; and

31 (C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

32 (3) Division of Natural Resources and Natural Resources Commission provided in §20-1-  
33 1 *et seq.* of this code;

34 (4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

35 (5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

36 (6) Workforce West Virginia provided in chapter 21A of this code, which includes:

37 (A) Division of Unemployment Compensation;

38 (B) Division of Employment Service;

39 (C) Division of Workforce Development;

40 (D) Division of Research, Information and Analysis; and

41 (7) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

42 (c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is  
43 continued as an independent agency within the executive branch.

44 (d) The Water Development Authority and the Water Development Authority Board  
45 provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the  
46 executive branch.

47 (e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of  
48 this code is continued as a separate independent agency within the Department of Arts, Culture,  
49 and History, which shall provide administrative support for the authority.

50 (f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is  
51 continued as a separate independent agency within the Executive Branch as the Department of  
52 Arts, Culture, and History. All references throughout this code to the "Division of Culture and  
53 History" means the "Department of Arts, Culture, and History".

54 (g) The following agencies and boards, including all of the allied, advisory, and affiliated  
55 entities, are transferred to the Department of Environmental Protection for purposes of  
56 administrative support and liaison with the Office of the Governor:

57 (1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

58 (2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

59 (3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of  
60 this code;

61 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

62 (5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;

63 (6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

64 (7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

65 (h) Subject to the provisions of §5F-2-1a of this code, the following agencies and boards,  
66 including all of the allied, advisory, affiliated, or related entities and funds associated with any  
67 agency or board, are incorporated in and administered as a part of the Department of Health and  
68 Human Resources:

69 (1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

- 70 (2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;
- 71 (3) Office of Emergency Medical Services and the Emergency Medical Service Advisory  
72 Council provided in §16-4C-1 *et seq.* of this code;
- 73 (4) Health Care Authority provided in §16-29B-1 *et seq.* of this code;
- 74 (5) The Developmental Disabilities Council established by Executive Order No. 6-88 and  
75 continued by Executive Order No. 15-99;
- 76 (6) Women's Commission provided in §29-20-1 *et seq.* of this code; and
- 77 (7) Bureau for Child Support Enforcement provided in §48-1-1 *et seq.* of this code.
- 78 (i) The following agencies and boards, including all of the allied, advisory, affiliated, or  
79 related entities and funds associated with any agency or board, are incorporated in and  
80 administered as a part of the Department of Homeland Security:
- 81 (1) West Virginia State Police;
- 82 (2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and  
83 Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That  
84 notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule  
85 promulgated thereunder, a reference is made to the Division of Homeland Security and  
86 Emergency Management, it shall be construed to mean the Division of Emergency Management;
- 87 (3) Division of Administrative Services;
- 88 (4) Division of Corrections and Rehabilitation;
- 89 (5) Fire Commission;
- 90 (6) State Fire Marshal;
- 91 (7) Board of Probation and Parole;
- 92 (8) The West Virginia Fusion Center;
- 93 (9) Division of Protective Services; and
- 94 (10) Any other agency or entity hereinafter established within the Department of Homeland  
95 Security by an act of the Legislature.

96 (j) The following agencies and boards, including all of the allied, advisory, affiliated, or  
97 related entities and funds associated with any agency or board, are incorporated in and  
98 administered as a part of the Department of Revenue:

99 (1) Tax Division provided in §11-1-1 *et seq.* of this code;

100 (2) Racing Commission provided in §19-23-1 *et seq.* of this code;

101 (3) Lottery Commission and position of Lottery Director provided in §29-22-1 *et seq.* of this  
102 code;

103 (4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

104 (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of  
105 this code and §60-2-1 *et seq.* of this code;

106 ~~(6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;~~

107 ~~(7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code;~~

108 ~~(8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;~~

109 ~~(9) (6) The State Budget Office provided in §11B-2-1 *et seq.* of this code;~~

110 ~~(10) (7) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;~~

111 ~~(14) (8) The Office of Tax Appeals provided in §11-10A-1 *et seq.* of this code; and~~

112 ~~(42) (9) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.~~

113 (k) The following agencies and boards, including all of the allied, advisory, affiliated, or  
114 related entities and funds associated with any agency or board, are incorporated in and  
115 administered as a part of the Department of Transportation:

116 (1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

117 (2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;

118 (3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

119 (4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;

120 (5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

121 (6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

122 (7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

123 (l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code,  
124 including all of the allied, advisory, affiliated, or related entities and funds associated with it, is  
125 incorporated in and administered as a part of the Department of Veterans' Assistance.

126 (m) Except for powers, authority, and duties that have been delegated to the secretaries of  
127 the departments by §5F-2-2 of this code, the position of administrator and the powers, authority,  
128 and duties of each administrator and agency are not affected by the enactment of this chapter.

129 (n) Except for powers, authority, and duties that have been delegated to the secretaries of  
130 the departments by §5F-2-2 of this code, the existence, powers, authority, and duties of boards  
131 and the membership, terms, and qualifications of members of the boards are not affected by the  
132 enactment of this chapter. All boards that are appellate bodies or are independent decision makers  
133 may not have their appellate or independent decision-making status affected by the enactment of  
134 this chapter.

135 (o) Any department previously transferred to and incorporated in a department by prior  
136 enactment of this section means a division of the appropriate department. Wherever reference is  
137 made to any department transferred to and incorporated in a department created in §5F-1-2 of this  
138 code, the reference means a division of the appropriate department and any reference to a  
139 division of a department so transferred and incorporated means a section of the appropriate  
140 division of the department.

141 (p) When an agency, board, or commission is transferred under a bureau or agency other  
142 than a department headed by a secretary pursuant to this section, that transfer is solely for  
143 purposes of administrative support and liaison with the Office of the Governor, a department  
144 secretary, or a bureau. Nothing in this section extends the powers of department secretaries under  
145 §5F-2-2 of this code to any person other than a department secretary and nothing limits or  
146 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this  
147 code.



148 (q) The Department of Economic Development as established in §5B-2-1 *et seq.* of this  
149 code is continued as a separate independent agency within the Executive Branch.

150 (r) The Department of Tourism as established in §5B-2I-1 *et seq.* of this code is continued  
151 as a separate independent agency within the Executive Branch.

152 (s) Subject to the provisions of §5F-2-1b of this code, the Board of Banking and Financial  
153 Institutions, as established in §31A-3-1 *et seq.* of this code, the Division of Financial Institutions as  
154 established in §31A-2-1 *et seq.* of this code, and the Lending and Credit Rate Board, as  
155 established in § 47A-1-1 *et seq.* of this code, are continued as a separate independent divisions  
156 within the Executive Branch.

**§5F-2-1b. Reorganization and structure of the Board of Banking and Financial Institutions,  
the Division of Financial Institutions, and the Lending and Credit Rate Board as  
independent divisions and boards of the executive branch; legislative intent.**

1 (a) It is the intent of the Legislature to devolve the Department of Revenue's administration  
2 of the Division of Financial Institutions, the Board of Banking and Financial Institutions, and the  
3 Lending and Credit Rate Board, and to recognize each as an independent separate and distinct  
4 division or board of the executive branch pursuant to the structure outlined in subsection (b) of this  
5 section.

6 (1) The Board of Banking and Financial Institutions, created under §31A-3-1 *et seq.* of this  
7 code, beginning January 1, 2025, is an independent board of the executive branch.

8 (2) Subject to the provisions of subsection (b) of this section, the Division of Financial  
9 Institutions, created under §31A-2-1 *et seq.* of this code, beginning January 1, 2025, is a separate  
10 and distinct division of the executive branch.

11 (3) Subject to the provisions of subsection (b) of this section, the Lending and Credit Rate  
12 Board, created under §47A-1-1 *et seq.* of this code, beginning January 1, 2025, is an independent  
13 board of the executive branch.

14 (b) Beginning January 1, 2025, the Board of Banking and Financial Institutions, the

15 Division of Financial Institutions, and the Lending and Credit Rate Board are herein organized as  
16 independent separate and distinct divisions of the executive branch: *Provided*, the Board of  
17 Banking and Financial Institutions shall be the chief executive body and shall exercise control and  
18 supervision over the Division of Financial Institutions and the Lending and Credit Rate Board. The  
19 Board of Banking and Financial Institutions shall oversee and approve any policy decision,  
20 proposed budget, or personnel-related decision of the Division of Financial Institutions and the  
21 Lending and Credit Rate Board, subject to the powers reserved for the commissioner of the  
22 Division of Financial Institutions in 31A-2-1 *et seq* of this code .

23 (c) All programs, orders, determinations, rules, permits, grants, contracts, certificates,  
24 bonds, authorizations and privileges which have been issued, promulgated, made, granted or  
25 allowed to become pursuant to authority provided by this code to the Division of Financial  
26 Institutions, the Board of Banking and Financial Institutions, or the Lending and Credit Rate Board,  
27 that are in effect on the dates of the creation of the new independent divisions of the executive  
28 branch, as provided in this section shall continue in effect according to their terms until modified,  
29 terminated, superseded, set aside or revoked by the board, division or commissioner that  
30 assumes authority over the subject matter of the same under the provisions of this Act.

**§5F-2-9. Special merit-based personnel system for Division of Financial Institutions employees.**

1 (a) The Legislature finds the State of West Virginia is having extreme difficulty retaining  
2 bank examiners who make a thorough examination of all the books, accounts, records, and  
3 papers of every depository financial institution throughout the State. The Legislature finds that, to  
4 address this problem, the hiring and retention processes of the Division of Financial Institutions  
5 must be streamlined to effectively and efficiently meet personnel needs while still affording  
6 applicants and employees' due process.

7 (b) The purpose of this section is to allow the division to employ qualified applicants in  
8 vacant and new personnel positions within the division in a timely manner and to ensure that the

9 division maintains an adequate workforce to effectively and fairly administer, collect and enforce  
10 the banking laws of this state.

11 (c) All officers and employees of the division and all future officers and employees shall be  
12 exempt from the Division of Personnel and all requirements of §29-6-1 et seq. of this code and any  
13 related rules. Officers and employees of the division shall not be terminable except for cause as  
14 defined by the division.

15 (d) The commissioner of the Division of Financial Institutions shall develop a merit-based  
16 policy for the division. The procedure shall include classification specifications, seniority status,  
17 personnel qualifications, duties, maximum and minimum salary schedules and may include  
18 compensation adjustments, retention incentives, and hiring approval by the commissioner. The  
19 commissioner shall have the authority to evaluate applicants for employment or promotion or  
20 make classification determinations for positions within the merit-based system subject to approval  
21 or rejection by the Board of Banking pursuant to §5F-2-1 of this code. The pay rates and  
22 employment requirements shall be put into effect on or before January 1, 2025. This merit-based  
23 system shall apply to new employees in the above referenced job classifications and for existing  
24 employees who elect, in writing to enter the merit-based system. The merit-based system is  
25 exempt from the Division of Personnel and all requirements of §29-6-1 et seq. of this code and any  
26 related rules. There is no requirement for uniformity regarding the pay scale for the same  
27 classification between regions of the state to account for market rates and demand for specific  
28 positions. The provisions of §6C-2-1 et seq. of this code are not applicable. There is no right to  
29 grievance for any such regional pay disparity for the same job.

## **CHAPTER 31A. BANKS AND BANKING.**

### **ARTICLE 2. DIVISION OF BANKING.**

#### **§31A-2-2. Commissioner's appointment, term, qualifications, salary, oath and bond.**

1 The commissioner of banking is the chairman of the Board of Banking and Financial

2 Institutions and the chief executive officer of the Division of Financial Institutions and shall be  
3 appointed by the Governor, by and with the advice and consent of the Senate. He or she shall  
4 serve at the will and pleasure of the Governor for the term for which the Governor was elected and  
5 until his successor is appointed and qualified, unless earlier removed from office for cause as  
6 provided by law.

7 Any person appointed as commissioner shall have a college degree from an accredited  
8 institution, be of good moral character, ~~have knowledge of the theory and practice of banking and~~  
9 ~~be at least twenty-five years of age~~ be at least thirty-five (35) years old, and shall have had ten (10)  
10 years' experience as a bank president or managing officer of a bank, or five (5) years' experience  
11 as a state or federal bank regulator. The commissioner and, with the commissioner's authority,  
12 other members of the Division shall be entitled to reimbursement for actual and necessary travel  
13 incurred in the performance of their duties.

14 Before entering upon the discharge of his duties as commissioner, he shall take and  
15 subscribe to the oath of office prescribed in section five, article four of the Constitution of West  
16 Virginia and shall enter into a bond in the penal sum of \$100,000, with a corporate surety  
17 authorized to engage in business in this state, conditioned upon the faithful discharge and  
18 performance of the duties of his office. The premium of such bond shall be payable from the State  
19 Treasury out of funds allocated to the ~~department of banking~~ Division of Financial Institutions. The  
20 executed oath and bond shall be filed in the office of the Secretary of State.

**§31A-2-3. Deputy commissioner's appointment, tenure, salary, qualifications, oath and  
bond; exercise of commissioner's powers by deputy.**

1 The deputy commissioner ~~of banking~~ shall be appointed by and be under the supervision  
2 and direction of the commissioner ~~of banking~~. The deputy commissioner's tenure in office shall be  
3 at the will and pleasure of the commissioner. The deputy commissioner's salary shall be fixed  
4 annually by the commissioner and shall be payable in installments as provided by law.

5 Any person appointed as deputy commissioner shall be at least thirty (30) years old and

6 ~~shall have had at least three~~ five (5) years' experience as ~~an active executive officer of a bank in~~  
 7 ~~this state~~ a bank president or managing officer of a bank or a minimum of ~~three~~ five (5) years'  
 8 experience ~~in a bank regulator or supervisory capacity for this state, for other states, or for the~~  
 9 ~~federal government~~ as a state or federal bank regulator, or a combination thereof, ~~or a minimum of~~  
 10 ~~four years' combined experience as such active bank executive officer and in such examining or~~  
 11 ~~supervisory capacity.~~

12 Before entering upon the discharge of the duties of his office, the deputy commissioner  
 13 shall comply with the same oath and bond requirements prescribed for the commissioner in  
 14 section two of this article.

15 In the event of a vacancy in the office of the commissioner or in the event of the disability or  
 16 absence from the state of the commissioner, the deputy commissioner shall have and may  
 17 exercise all of the authority and powers of the commissioner and shall be responsible for the  
 18 performance of all duties, functions and services of the commissioner.

**§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 §5F-2-1 and §31A-3-1 et seq. of this code,  
 2 the 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,  
 4 credit 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 the  
 6 commissioner. He or she shall be the chief executive officer of the Division of Financial Institutions  
 7 and is responsible for the division's organization, services, and personnel and for the orderly and  
 8 efficient administration, enforcement, and execution of the provisions of this chapter and all laws  
 9 vesting authority or powers in, or prescribing duties or functions for, the division or the  
 10 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 of  
17 the commissioner and authorized personnel of the Division of Financial Institutions. No person  
18 shall divulge any information contained in any records except as authorized in this subdivision in  
19 response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal  
20 proceeding or in a civil enforcement action brought by the state or federal regulatory authorities.  
21 Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant  
22 records and information from the records for good cause, upon imposing terms and conditions  
23 considered necessary to protect the confidential nature of the records, the financial integrity of the  
24 financial institution, or the person to which the records relate, and the legitimate privacy interests  
25 of any individual named in the records. Conformity with federal procedures shall be sought where  
26 the institution maintains federal deposit insurance. The commissioner has and may exercise  
27 reasonable discretion as to the time, manner, and extent the other records in his or her office and  
28 the information contained in the records are available for public examination;

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

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

33           (4) Require a criminal background investigation, including requiring fingerprints for  
34 submission to the Federal Bureau of Investigation or any governmental agency or entity  
35 authorized to receive such information for a state, national, or international criminal history check,  
36 of each:

37           (A) Applicant seeking approval to charter and/or control a state bank, state credit union, or

38 a foreign bank state agency or representative office;

39 (B) Applicant seeking a license to engage in the business of money transmission, currency  
40 exchange, or other activity regulated under §32A-2-1 *et seq.* of this code;

41 (C) Applicant subject to the commissioner's supervision seeking a license to engage in the  
42 business of regulated consumer lending, mortgage lending, or brokering; and

43 (D) Division of Financial Institutions regulatory employee applicants.

44 (E) The provisions of this subdivision are not applicable where the applicant is a company  
45 or entity already subject to supervision and regulation by the Federal Reserve Board or other  
46 federal bank, thrift, or credit union regulator, or is a direct or indirect subsidiary of a company or  
47 entity subject to the supervision and regulation, or where the applicant is a company subject to the  
48 supervision and regulation of the federal Securities and Exchange Commission whose stock is  
49 publicly traded on a registered exchange or through the National Association of Securities Dealers  
50 automated quotation system, or the applicant is a direct or indirect subsidiary of such a company,  
51 the investigation into criminal background is not required. The provisions of this subdivision are not  
52 applicable to applicants seeking interim bank charters organized solely for the purpose of  
53 facilitating the acquisition of another bank pursuant to §31A-4-5 of this code. The requirements of  
54 this subdivision are applicable to the principals of the applicant where a nonexempt applicant  
55 under this subdivision is not a natural person. As used in this subdivision, the term "principals"  
56 means the chief executive officer, regardless of title, managing partner if a partnership, members  
57 of the organizing group if no chief executive officer has yet been appointed, trustee, or other  
58 person controlling the conduct of the affairs of a licensee. A person controlling 10 percent or more  
59 of the stock of any corporate applicant shall be considered to be a principal under this provision.  
60 Notwithstanding any other provision of this code to the contrary, the commissioner may determine  
61 alternate acceptable forms for background check information for direct or indirect principals of a  
62 licensee or applicant for a mortgage lender or broker license or a money transmission license who  
63 are not residents of the United States if such licensee or applicant also has owners or principals

64 who are residents of the United States and the division has been provided adequate background  
65 information, as provided in this subdivision, for such owners or principals of the licensee or  
66 applicant who are United States residents. The commissioner may establish relationships or  
67 contracts with the Nationwide Mortgage Multistate Licensing System and Registry or other entities  
68 designated by the Nationwide Mortgage Multistate Licensing System and Registry to collect and  
69 maintain records related to criminal background investigations and fingerprints of persons subject  
70 to this subsection.

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

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

79 (c) Pursuant to §5F-2-9 of this code, the commissioner shall prepare in writing a merit-  
80 based policy for all employee positions for the division, including job classifications, seniority  
81 status, personnel qualifications, duties, maximum and minimum salary schedules, and other  
82 personnel information for approval by the Board of Banking and Financial Institutions. The  
83 commissioner may select, appoint, and employ such accountants, attorneys, auditors, examiners,  
84 clerks, secretaries, stenographers, and other personnel as the commissioner deems necessary  
85 for the proper administration of the division and any statutory duties of the commissioner.

86 (d) The commissioner shall prepare and propose an annual budget for the Division of  
87 Financial Institutions to the Board of Banking and Financial Institutions. The commissioner may  
88 appoint a Budget Director to assist with managing the financial accounts and assets of the division  
89 Effective January 1, 2025, and each year thereafter, 10 percent (10%) of all annual revenue



90 collected by the commissioner shall be deposited to the General Revenue Fund of the State  
91 Treasury. The commissioner's proposed budget shall be submitted to the Board of Banking and  
92 Financial Institutions for approval pursuant to §5F-2-1b of this code.

93 ~~(e)~~(e) In addition to all other authority and powers vested in the commissioner by provisions  
94 of this chapter and other applicable laws, subject to the powers reserved to the Board of Banking  
95 and Financial Institutions in §5F-2-1b of this code and §31-A-3 et seq. of this code, the  
96 commissioner may:

97 ~~(1) Provide for the organization of the division and the procedures and practices of the~~  
98 ~~division and implement the procedures and practices by the promulgation of rules and forms as~~  
99 ~~appropriate and the rules shall be promulgated in accordance with §29A-3-1 et seq. of this code~~  
100 Promulgate reasonable rules to carry out the purposes and programs of the Division of Financial  
101 Institutions to include generally. These rules are not subject to Chapter 29A of this code but shall  
102 be filed with the Secretary of State and approved by the Board of Banking and Financial  
103 Institutions. The commissioner is authorized to expend funds for this purpose. The commissioner  
104 may adopt any of the rules previously promulgated by the Division of Financial Institutions;

105 (2) Employ, direct, discipline, discharge, and establish qualifications and duties for all  
106 personnel for the division, including, but not limited to, accountants, attorneys, auditors, clerks,  
107 secretaries, examiners, assistant examiners, conservators, and receivers, and establish the  
108 amount and condition of bonds for the personnel he or she considers appropriate and pay the  
109 premiums on the bonds. ~~and, if he or she elects, have all personnel subject to and under the~~  
110 ~~classified service of the state personnel division;~~

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

114 (4) In addition to the examinations required by §31A-2-6 of this code, inspect, examine,  
115 and audit the books, records, accounts, and papers of all financial institutions and any third-party

116 vendor providing information technology services to financial institutions at such times as  
117 circumstances in his or her opinion may warrant;

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

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

125 (A) Maintain their accounts consistent with rules prescribed by the commissioner and in  
126 accordance with generally accepted accounting practices.

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

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

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

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

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

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

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

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

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

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

143 (7) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, receive from  
144 any person or persons and consider any request, petition, or application relating to the  
145 organization, location, conduct, services, policies, and procedures of any financial institution and  
146 to act on the request, petition, or application in accordance with any provisions of law applicable  
147 thereto;

148 (8) In connection with the investigations required by §31A-2-4(b)(3) of this code, issue  
149 subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and  
150 hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served,  
151 and enforced in the manner provided in §29A-5-1 of this code. Any person appearing and  
152 testifying at a hearing may be accompanied by an attorney employed by him or her;

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

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

160 (11) Implement all of the provisions of this chapter, except the provisions of §31A-3-1 *et*  
161 *seq.* of this code, and all other laws which he or she is empowered to administer and enforce by  
162 the promulgation of rules in accordance with the provisions of §29A-3-1 *et seq.* of this code;

163 (12) Implement the provisions of chapter 46A of this code applicable to consumer loans  
164 and consumer credit sales by the promulgation of rules in accordance with the provisions of §29A-  
165 3-1 *et seq.* of this code as long as the rules do not conflict with any rules promulgated by the state's  
166 Attorney General;

167 (13) Foster and encourage a working relationship between the Division of Financial

168 Institutions and financial institutions, credit, consumer, mercantile, and other commercial and  
169 finance groups and interests in the state in order to make current appraisals of the quality, stability,  
170 and availability of the services and facilities of financial institutions;

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

176 (15) Delegate the powers and duties of his or her office, other than the powers and duties  
177 excepted in this subdivision, to qualified division personnel who shall act under the direction and  
178 supervision of the commissioner and for whose acts he or she is responsible, but the  
179 commissioner may delegate to the deputy commissioner of financial institutions and to no other  
180 division personnel the following powers, duties, and responsibilities, all of which are hereby  
181 granted to and vested in the commissioner and for all of which the commissioner also is  
182 responsible. The commissioner shall:

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

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

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

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

194 engaged in conduct described in the assurance;

195 (16) Seek and obtain civil administrative penalties against any person who violates this  
196 chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the  
197 commissioner or Board of Banking and Financial Institutions in an amount not more than \$5,000  
198 per day for each violation: *Provided*, That all of the pertinent provisions of §29A-5-1 et seq. of this  
199 code shall apply to any assessment of a penalty under this subsection;

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

202 (18) Expend funds in order to promote consumer awareness and understanding of issues  
203 related to residential mortgage lending. In furtherance of this duty, there is established in the State  
204 Treasury a special revenue account to be known as the Consumer Education Fund, which shall be  
205 administered by the Commissioner of Financial Institutions. Ten percent of all civil administrative  
206 penalties collected by the Division of Financial Institutions during each fiscal year shall be  
207 deposited into the fund and may be expended by the commissioner to promote consumer  
208 awareness and understanding of issues related to residential mortgage lending. The account shall  
209 be a special revenue account and may be invested and retain all earnings and interest. Any  
210 remaining balance less than \$500,000, including accrued interest, in the fund at the end of the  
211 fiscal year shall not revert to the General Revenue Fund, but shall remain in the account. Any  
212 balance which exceeds \$500,000 as of June 30, 2012, and each year thereafter, shall revert to the  
213 General Revenue Fund; and

214 (19) Take other action as he or she may consider necessary to enforce and administer the  
215 provisions of this chapter, except the provisions of §5F-2-1 and §31A-3-1 et seq. of this code, and  
216 all other laws which he or she is empowered to administer and enforce and apply to any court of  
217 competent jurisdiction for appropriate orders, writs, processes, and remedies.

**§31A-2-4a. Orders of the commissioner of ~~banking~~ to be made public.**

1 Any order entered by the commissioner of ~~banking~~ against any person:

2 (1) To cease violating any provision or provisions of this chapter or other applicable law or  
3 rule and regulation promulgated or order issued thereunder;

4 (2) To cease engaging in any unsound practice or procedure which may detrimentally  
5 affect any financial institution;

6 (3) To revoke the certificate of authority, permit or license of any financial institution; and

7 (4) To take such other action as the commissioner of ~~banking~~ may deem necessary to  
8 enforce and administer the provisions of this chapter and all other laws which the commissioner is  
9 empowered to enforce is a matter of public record.

**§31A-2-4b. Provision of legal services.**

1 (a) The commissioner of ~~banking~~ has plenary power and authority to acquire those legal  
2 services the commissioner deems necessary to carry out the functions and duties of the Division  
3 of ~~Banking or the office of commissioner of banking~~ Financial Institutions, including, but not limited  
4 to, representation of the division or the commissioner in any administrative or judicial proceeding.

5 (b) The commissioner may acquire legal services from attorneys licensed to practice law  
6 who are employed by the commissioner on a salary basis or retained by the commissioner on a  
7 reasonable fee basis.

8 (c) The commissioner may also request the assistance of the Attorney General and be  
9 represented in an administrative or judicial proceeding by a deputy or assistant Attorney General  
10 acceptable to the commissioner.

**§31A-2-4c. County Clerk to file reports of trustees regarding sales of residential real  
property pursuant to deeds of trust and forward to the ~~banking~~ commissioner;  
transfer of powers and duties relating to reports of trustees to the West Virginia  
Housing Development Fund.**

1 (a) In addition to the jurisdiction, powers, and duties set out in section four of this article, the  
2 ~~banking~~ commissioner is vested with the jurisdiction, powers and duties to receive and compile the  
3 data into an electronic database and make available the raw data that is required to be reported by

4 trustees to county clerks pursuant to section eight-a, article one, chapter thirty-eight of the Code of  
5 West Virginia. The commissioner has the power to promulgate rules in accordance with this  
6 section and the provisions of article three, chapter twenty-nine-a of this code in order to carry out  
7 the requirements of this section. The commissioner is authorized to expend funds for this purpose.

8 (b) On and after July 1, 2010, the jurisdiction, powers and duties vested in the ~~banking~~  
9 commissioner in subsection (a) of this section are hereby transferred and imposed upon the West  
10 Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code  
11 and all data that has been received and compiled by the ~~banking~~ commissioner pursuant to  
12 subsection (a) of this section shall be transferred to the West Virginia Housing Development Fund.

**§31A-2-5. Certificate or license to engage in business; filing of amendments to charter,  
bylaws and foreign statutes.**

1 (a) No person shall engage or continue in the business of a financial institution in this state  
2 without a license or certificate to do so issued in accordance with this section, or other applicable  
3 law, which license or certificate remains unsuspended, unexpired and unrevoked except that a  
4 corporation which proposes to apply for such license or certificate may secure its charter, adopt  
5 bylaws, elect its directors and officers and perfect its organization.

6 (b) No person shall operate an office in West Virginia which regularly makes consumer  
7 loans in this state other than first mortgage loans unless they are a financial institution, licensed  
8 pawnbroker or a federally insured depository institution authorized and qualified to do business in  
9 this state. The purchase of consumer paper does not constitute the making of consumer loans for  
10 the purposes of this subsection, unless the purchase is made by a business affiliated with the  
11 credit provider pursuant to a standing arrangement.

12 (c) Application for such license or certificate shall be upon such forms and contain such  
13 information as the Commissioner may prescribe. In connection with such applications every  
14 corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to  
15 the amount of capital that has been subscribed and paid in and a statement of its financial

16 condition duly verified under oath by its president or vice president and its cashier or secretary as  
17 the case may be and every financial institution other than a corporation shall file a verified  
18 statement of its financial condition.

19 (d) If the application be that of a West Virginia state banking institution, the Commissioner  
20 ~~of Banking~~ shall examine the information, documents and statements submitted and, if he or she  
21 finds that such banking institution has adopted bylaws which provide practical, safe, just and  
22 equitable rules and methods for the management of its business and it has complied in all respects  
23 with the provisions of this chapter and other applicable laws, he or she shall issue to it a certificate  
24 or license permitting it to engage in business. If the application be that of a financial institution  
25 other than a banking institution, the Commissioner ~~of Banking~~ shall examine the information,  
26 documents and statements submitted and, if he or she finds that such financial institution has  
27 adequate resources for the proposed business and has provided practical, safe, just and equitable  
28 rules and methods for the management of its business, and it has complied in all respects with the  
29 provisions of this chapter and other applicable laws, and that the public convenience and  
30 advantage will be promoted by the issuance of a certificate or license thereto, he or she shall issue  
31 to it a certificate or license permitting it to engage in business. Such certificate or license shall be  
32 preserved and the original or copy thereof displayed in all the places of business of such banking  
33 or other financial institution located in this state.

34 (e) In addition to the requirements of subsections (b) and (c) of this section, every foreign  
35 corporation applying for a license or certificate to engage in the business of a financial institution in  
36 this state, other than an out-of-state banking institution, shall file with the Commissioner ~~of~~  
37 ~~Banking~~ a copy of the bylaws under which it operates, together with a cite to the statutes of the  
38 jurisdiction where it is organized which pertain to its organization and powers and the conduct of its  
39 business. The commissioner shall examine the information, documents and statements submitted  
40 by such foreign corporation and if he or she finds that they provide practical, safe, just and  
41 equitable rules and methods for the management of the business of the corporation, that it has



42 adequate resources for the proposed business and it has complied in all respects with the  
43 provisions of this chapter and other applicable laws and that the public convenience and  
44 advantage will be promoted by the issuance of a license or certificate thereto, he or she shall issue  
45 to such corporation a certificate or license permitting it to engage in business in this state, which  
46 certificate or license shall authorize such corporation to engage in the business of the type of  
47 financial institution specified therein, until the thirtieth day of the following June. Thereafter a new  
48 certificate or license shall be secured annually by any such foreign corporation, except where  
49 annual renewal of the license or certificate is specifically not required for the type of institution  
50 involved. The fee for the original and each additional license or certificate issued to a foreign  
51 corporation shall be \$100, unless otherwise provided by statute. A verified statement of the  
52 financial condition of every such foreign corporation shall be filed with the Commissioner before  
53 the issuance of each annual certificate or license. Such certificate or license shall be preserved  
54 and the original or copy thereof displayed in the West Virginia place of business of such  
55 corporation.

56 (f) Unless the institution is a federally insured depository institution or it is otherwise  
57 provided for by statute, a new certificate or license shall be secured annually by all domestic state  
58 financial institutions and the fee for the original and each additional license or certificate shall be  
59 \$100.

60 (g) No amendment of the charter or bylaws of any domestic or foreign corporation, other  
61 than an out-of-state banking institution, engaging in business in this state as a financial institution  
62 shall become effective until the proposed change shall have been submitted to and approved by  
63 the Commissioner of ~~Banking~~; but, if the Commissioner does not disapprove such proposed  
64 change within twenty days after it is received by him or her, it shall be deemed to have been  
65 approved.

66 (h) Unless specifically provided for by this chapter, nothing contained in this code shall  
67 authorize any person to engage in the banking business in this state except corporations

68 chartered to conduct a banking business under the laws of West Virginia and which hold a license  
69 or certificate to do so issued under this section, limited liability companies organized to conduct a  
70 banking business under the laws of West Virginia and which hold a license or certificate to do so  
71 under this section or associations authorized to conduct a banking business in West Virginia under  
72 the laws of the United States and having their principal place of business in this state.

**§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal or out-of-state agency in lieu of commissioner's examination.**

1 (a) The commissioner shall make a thorough examination of all the books, accounts,  
2 records and papers of every depository financial institution using the same frequency of  
3 examination schedule as the financial institution's primary federal regulator. He or she shall  
4 carefully examine all of the assets of each institution, including its notes, drafts, checks,  
5 mortgages, securities deposited to assure the payment of debts unto it and all papers, documents  
6 and records showing, or in any manner relating to, its business affairs and shall ascertain the full  
7 amount and the nature in detail of all of its assets and liabilities. The commissioner may also, at his  
8 or her discretion, make or cause to be made an annual or periodic examination of the books,  
9 accounts, records and papers of other financial institutions under his or her supervision for the  
10 purposes of determining compliance with applicable consumer and credit lending laws and  
11 verifying information provided in any license application or annual report submitted to the  
12 commissioner. The commissioner may also make an examination of any subsidiaries or affiliates  
13 of a financial institution as he or she may consider necessary to ascertain the financial condition of  
14 the financial institution, the relations between the financial institution and its subsidiaries and  
15 affiliates and the effect of the relations upon the affairs of the financial institution. A full report of  
16 every examination shall be made and filed and preserved in the office of the commissioner and a  
17 copy of it immediately mailed to the institution examined. Every institution shall retain all of its  
18 records of final entry for the period of time as required in section thirty-five, article four of this

19 chapter for banking institutions. Unless otherwise covered by assessments or a specific provision  
20 of this code, the cost of examinations made pursuant to this section shall be borne by the financial  
21 institution at a rate of \$50 per each examiner hour expended.

22 (b) Every official communication from the commissioner to any institution, or to any officer  
23 thereof, relating to an examination or an investigation of the affairs of the institution conducted by  
24 the commissioner or containing suggestions or recommendations as to the manner of conducting  
25 the business of the institution, shall be read by the board of directors at the next meeting after its  
26 receipt and the president, or other executive officer, of the institution shall immediately notify the  
27 commissioner in writing of the presentation and reading of the communication and of any action  
28 taken on it by the institution.

29 (c) The Commissioner of Banking, in his or her discretion, may: (i) Accept a copy of a  
30 reasonably current examination of any banking institution made by the Federal Deposit Insurance  
31 Corporation or the Federal Reserve System in lieu of an examination of the banking institution  
32 required or authorized to be made by the laws of this state and the commissioner may furnish to  
33 the Federal Deposit Insurance Corporation or the Federal Reserve System or to any official or  
34 examiner thereof any copy or copies of the commissioner's examinations of and reports on the  
35 banking institutions; (ii) accept a copy of a reasonably current examination of any out-of-state bank  
36 or any West Virginia state bank's out-of-state activities made by another state's banking regulatory  
37 authority in lieu of an examination of the banking institution required or authorized to be made by  
38 the laws of this state and the commissioner may furnish to the other state's banking regulatory  
39 authority or to any official or examiner thereof any copy or copies of the commissioner's  
40 examinations of and reports on the banking institutions; but nothing in this subsection shall be  
41 construed to limit the duty and responsibility of banking institutions to comply with all provisions of  
42 law relating to examinations and reports, nor to limit the powers and authority of the commissioner  
43 of banking with reference to examinations and reports under existing laws. The provision or  
44 exchange of examination reports and other records of financial condition and individuals pursuant

45 to cooperative, coordinating or information-sharing agreements with other bank supervisory  
46 agencies and persons as permitted by this chapter under an agreement of confidentiality shall not  
47 constitute a violation of section four of this article.

**§31A-2-7. Duties of officers, employees, etc., of financial institution in connection with  
examination; examination under oath; offenses and penalties.**

1 All officers, directors, employees and other persons connected with any financial  
2 institution, upon request of the commissioner of ~~banking~~, or his or her duly authorized  
3 representative, shall furnish and give full access to all of the books, papers, notes, bills and other  
4 evidences of debts due to the institution; produce and furnish all documents, records, writings and  
5 papers relating to the business of the institution which the commissioner is authorized to examine;  
6 disclose fully, accurately and in detail all of the debts and liabilities of the institution; and furnish the  
7 clerical aid and assistance as may be required in the performance of the commissioner's duties as  
8 provided by law. The commissioner or his or her representative, as the case may be, shall have  
9 the right and authority to administer oaths and to examine under oath each officer, director,  
10 employee or other person connected with the institution concerning any matter and thing  
11 pertaining to the business and condition of the institution.

12 Any officer, director, employee or other person connected with any such institution who  
13 willfully fails or refuses to so furnish the documents, papers, materials or information as herein  
14 required or who willfully fails to discharge any other duty or obligation as herein provided shall be  
15 guilty of a misdemeanor and, upon conviction thereof, shall be subject to the penalties provided in  
16 section fifteen, article eight of this chapter.

**§31A-2-8. Commissioner's assessments and examination revolving fund; assessments,  
costs and expenses of examinations; collection.**

1 (a) All moneys collected by the commissioner from financial institutions and bank holding  
2 companies for assessments, examination fees, investigation fees or other necessary expenses  
3 incurred by the commissioner in administering such duties shall be paid to the commissioner and

4 paid by the commissioner to the treasurer of the state to the credit of a special revenue account to  
 5 be known as the "commissioner's assessment and examination revolving fund" which is hereby  
 6 established. The revolving fund shall be a continuing fund, not subject to fiscal year limitations.  
 7 Expenditures from the fund shall be made pursuant to the laws of this state and the statutes  
 8 relating to the division, and without legislative appropriation. ~~The assessments and fees paid into~~  
 9 ~~this account shall be appropriated by law and used to pay the costs and expenses of the Division~~  
 10 ~~of Banking Financial Institutions and all incidental costs and expenses necessary for its~~  
 11 ~~operations. All fees not otherwise directed shall be deposited in the commissioner's assessment~~  
 12 ~~and examination revolving fund. At the end of each fiscal year, if the fund contains a sum of money~~  
 13 ~~in excess of twenty percent fifty percent of the appropriated budget of the Division of Banking, the~~  
 14 ~~amount of the excess shall be transferred to the General Revenue Fund of the state. The~~  
 15 ~~Legislature may appropriate money to start the special revenue account.~~

16 (b) the Commissioner of Banking shall charge and collect from each state banking  
 17 institution or other financial institution or bank holding company and pay into a special revenue  
 18 account in the State Treasury for the Division of Banking assessments as follows: (1) For each  
 19 state banking institution, a quarterly assessment payable on January 1, April 1, July 1, and  
 20 October 1 each year, computed upon the total assets of the banking institution shown on the report  
 21 of condition of the banking institution filed as of the preceding June 30, September 30, December  
 22 31 and March 31, respectively, as follows:

23	Total Assets
24	But Not Of Excess
25	Over Over This Over
26	Million Million Amount Plus Million
27	\$ 0 \$ 2 \$ 0 .001645020 0
28	2 20 3,290 .000205628 2
29	20 100 6,991 .00016450 220

30	100	200	20,151	.000106926	100
31	200	1,000	30,844	.000090476	200
32	1,000	2,000	103,225	.000074026	1,000
33	2,000	6,000	177,251	.000065801	2,000
34	6,000	20,000	440,454	.000055988	6,000
35	20,000	40,000	1,224,292	.000052670	20,000

36 (2) For each regulated consumer lender, an annual assessment payable on July 1, each  
 37 year, computed upon the total outstanding gross loan balances and installment sales contract  
 38 balances net of unearned interest of the regulated consumer lender shown on the report of  
 39 condition of the regulated consumer lender as of the preceding thirty-first day of December,  
 40 respectively, as follows:

41	Total Outstanding Balances				
42	But Not This Of Excess				
43	Over Over Amount Plus Over				
44	\$ 0	\$ 1,000,000	800	- -	
45	1,000,000	5,000,000	800	.000400	1,000,000
46	5,000,000	10,000,000	2,400	.000200	5,000,000
47	10,000,000	-	4,200	.000100	10,000,000

48 If a regulated consumer lender's records or documents are maintained in more than one  
 49 location in this state, then eight hundred dollars may be added to the assessment for each  
 50 additional location.

51 In addition to the assessment provided in this subdivision, the commissioner shall charge  
 52 and collect from each regulated consumer lender the actual and necessary costs and expenses  
 53 incurred in connection with any examination of a regulated consumer lender.

54 (3) For each credit union, an annual assessment as provided for in section eight, article  
 55 one, chapter thirty-one-c of this code as follows:

56	Total Assets
57	But Not This Of Excess
58	Over Over Amount Plus Over
59	\$ 0 \$ 100,000 100 - -
60	100,000 500,000 300 - -
61	500,000 1,000,000 500 - -
62	1,000,000 5,000,000 500 .000400 1,000,000
63	5,000,000 10,000,000 2,100 .000200 5,000,000
64	10,000,000 - 3,100 .000100 10,000,000

65 (4) For each bank holding company, an annual assessment as provided for in section  
 66 eight, article eight-a of this chapter. The annual assessment may not exceed ten dollars per million  
 67 dollars in deposits rounded off to the nearest million dollars.

68 (c) The commissioner shall each December March, June and September prepare and  
 69 send to each state banking institution a statement of the amount of the assessment due. The  
 70 commissioner shall further, each June, prepare and send to each regulated consumer lender and  
 71 each state credit union a statement of the amount of the assessment due. The commissioner shall  
 72 annually, during the month of January, prepare and send to each bank holding company a  
 73 statement of the amount of the assessment due.

74 State banking institution assessments may be prescribed every three months, not later  
 75 than June 15 September 15, December 15 and March 15 by written order of the commissioner, but  
 76 shall not exceed the maximums as set forth in subsection (b) of this section. In setting the  
 77 assessments the primary consideration shall be the amount appropriated by the Legislature for the  
 78 Division of Banking Financial Institutions for the corresponding annual period. Reasonable notice  
 79 of the assessments shall be made to all interested parties. All orders of the commissioner for the  
 80 purpose of setting assessments are not subject to the provisions of the West Virginia  
 81 administrative procedures act under chapter twenty-nine-a of this code.

82 (d) For making an examination within the state of any other financial institution for which  
83 assessments are not provided by this code, the commissioner ~~of banking~~ shall charge and collect  
84 from such other financial institution and pay into the special revenue account for the Division of  
85 ~~Banking~~ Financial Institutions the actual and necessary costs and expenses incurred in  
86 connection therewith, as fixed and determined by the commissioner. Banks that provide only trust  
87 or other nondepository services, nonbanking subsidiaries of bank holding companies that provide  
88 trust services, nonbanking subsidiaries of banks that provide trust services and any trust entity that  
89 is jointly owned by federally insured depository institutions may be assessed for necessary costs  
90 and expenses associated with an examination pursuant to this subsection.

91 (e) If the records of an institution are located outside this state, the institution at its option  
92 shall make them available to the commissioner at a convenient location within the state or pay the  
93 reasonable and necessary expenses for the commissioner or his or her representatives to  
94 examine them at the place where they are maintained. The commissioner may designate  
95 representatives, including comparable officials of the state in which the records are located, to  
96 inspect them on his or her behalf.

97 (f) The Commissioner ~~of Banking~~ may maintain an action for the recovery of all  
98 assessments, costs and expenses in any court of competent jurisdiction.

**§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition  
of doubtful assets and past-due obligations; stockholders' meetings.**

1 Whenever it appears that any law, rule and regulation or order applicable to any financial  
2 institution is being violated, or that any irregularities exist or unsound practices or procedures are  
3 being engaged in, it shall be the duty of the commissioner ~~of banking~~ to promptly call the same to  
4 the attention of the officers and directors of the financial institution offending and to demand that  
5 the same be promptly corrected; and he or she may require a sworn statement from the said  
6 officers and directors covering the matter of all such violations and of all such irregularities,  
7 unsound practices or procedures to be furnished to him or her as often as he or she may deem



8 necessary, until he or she is satisfied that such violations have ceased and that the irregularities,  
9 unsound practices or procedures complained of have been corrected. Such reports shall not be  
10 made public, except as necessary as part of any order or other enforcement action or proceeding.

11 If any such institution owns any asset, the value of which, in the judgment of the  
12 commissioner ~~of banking~~, is questionable, or owns past-due obligations, the commissioner ~~of~~  
13 ~~banking~~ may require the assets of doubtful value to be at once converted into money or charged  
14 off of the books of the financial institution at the expiration of three months from the date of such  
15 order; or require legal proceedings to be at once instituted for the collection of any past-due  
16 obligations to the financial institution or that they be charged off.

17 Upon the written notice of the commissioner ~~of banking~~, the directors of any financial  
18 institution shall call a general meeting of the stockholders thereof to consider such matters as the  
19 commissioner may prescribe. Notice of such meeting shall be given in accordance with applicable  
20 statutes and the bylaws of the financial institution. The expense of such meeting and notice thereof  
21 shall be borne by the financial institution whose stockholders are so required to convene.

**§31A-2-12. Commissioner's annual report; contents; affidavit.**

1 Annually on or before December 1, the commissioner ~~of banking~~ shall prepare and submit  
2 to the Governor a careful and complete report, detailing the work, services and functions  
3 performed by him or her during the preceding fiscal year. The report shall show the total resources  
4 and liabilities of all financial institutions, the increase or decrease for the year in the aggregate of  
5 such resources and liabilities, carefully noting any failures that may have occurred, stating the  
6 causes thereof, and making such remarks, suggestions and recommendations as he may deem  
7 pertinent, including recommendations on policy, administration and legislation pertaining to all  
8 financial institutions.

9 Such report shall be verified by the affidavit of said commissioner, who shall swear that, in  
10 making the examination of each financial institution he or a qualified person in his department  
11 appointed by him has personally and carefully inspected the books, papers and affairs of the

12 institution, or in the case of any banking institution, that he has accepted a reasonably current  
 13 examination made by the federal deposit insurance corporation or the federal reserve system in  
 14 lieu of conducting such an examination, and that he has not, and, so far as he knows or is  
 15 informed, no person in his department has, in any case received or agreed to receive directly or  
 16 indirectly any reward, gift, or promise thereof, from any officer or other person connected with any  
 17 financial institution.

**§31A-2-14. Banking interests of and acceptance of gratuities by officers and employees of department.**

1 No officer or employee of the ~~department of banking~~ Division of Financial Institutions shall  
 2 be an officer, director, trustee, attorney, owner, shareholder, or partner in or of any financial  
 3 institution. Nor shall any officer or employee of the department receive, directly or indirectly, any  
 4 payment or gratuity from any financial institution, or be engaged in any manner in the negotiation  
 5 of loans for others therewith. Nothing herein shall prohibit said persons from having shares as a  
 6 result of membership in a credit union, mutual savings association, or similar depository institution  
 7 by virtue of being a customer; nor shall it prohibit the receipt of interest or other payments on  
 8 accounts made in the regular course of business.

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.**

**§31A-3-1. Board continued; appointment, qualifications, terms, oaths, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.**

1 (a) The West Virginia Board of Banking and Financial Institutions is continued and shall  
 2 consist of six members and the commissioner, who shall be chairman. The chairman shall vote  
 3 only in case of a tie on any question requiring action by the Board. The six members shall be  
 4 appointed by the Governor, by and with the advice and consent of the Senate. Three of the  
 5 members shall be executive officers of state banking institutions. When a vacancy occurs among  
 6 the executive officers of state banking institutions, the commissioner shall list all state banking

7 institutions according to each bank's asset size and then divide the list into three groups so that  
8 there is an equal number of banking institutions in each group. The vacancy shall then be filled  
9 from the appropriate group to ensure that each group has a representative on the board. One  
10 member shall be an executive officer of a financial institution other than a banking institution. Two  
11 members shall represent the public, neither of whom shall be an employee, officer, trustee,  
12 director or owner of five percent or more of the outstanding shares of any financial institution. A  
13 member shall not hold any other office, employment or position with the United States, any state,  
14 county, municipality or other governmental entity or any of their instrumentalities or agencies or  
15 with any political party.

16 (b) The members of the board shall be appointed for overlapping terms of six years and in  
17 every instance shall serve until their respective successors have been appointed and qualified.  
18 Any member appointed for a full six-year term may not be reappointed until two years after the  
19 expiration of that term. Any member appointed for less than a full six-year term is eligible for  
20 reappointment for a full term. Before entering upon the performance of his or her duties, each  
21 member shall take and subscribe to the oath required by section five, article IV of the Constitution  
22 of this state. The Governor shall, within sixty days following the occurrence of a vacancy on the  
23 board, fill the vacancy by appointing a person for the unexpired term of, and meeting the same  
24 requirements for membership as, the person vacating the office. The Governor may remove any  
25 member in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

26 (c) A majority of the members of the board constitutes a quorum. ~~The board shall meet at~~  
27 ~~least once in each calendar quarter on a date fixed by the board.~~ The board shall meet at least  
28 once every two months. The commissioner may, upon his or her own motion, or shall upon the  
29 written request of three members of the board, call additional meetings of the board upon at least  
30 twenty-four hours' notice. A member shall not participate in a proceeding before the board to which  
31 a corporation, partnership or unincorporated association is a party and of which he or she is, or  
32 was at any time in the preceding twelve months, a director, officer, owner, partner, employee,

33 member or stockholder. A member may disqualify himself or herself from participation in a  
 34 proceeding for any other cause determined by him or her to be sufficient. Each member shall  
 35 receive compensation in an amount equal to that authorized by section five, article two-a, chapter  
 36 four of this code for members of the Legislature for interim duties for each day or portion of a day  
 37 spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary  
 38 actual expenses incurred incident to his or her duties as a member of the board ~~as determined in~~  
 39 ~~accordance with regulations and policies issued by the travel management unit of the state~~  
 40 ~~Purchasing Division.~~

41 (d) The board shall keep an accurate record of all its proceedings and make certificates  
 42 thereupon as may be required by law. The commissioner shall make available necessary office  
 43 space and secretarial and other assistance required by the board.

**§31A-3-2. General powers and duties.**

1 (a) In addition to other powers conferred by §5F-2-1B and the powers within this chapter,  
 2 the board has the power to:

- 3 (1) Regulate its own procedure and practice;
- 4 (2) Promulgate reasonable rules to implement any provision of this article in accordance  
 5 with the provisions of article three, chapter twenty-nine-a of this code;
- 6 (3) Advise the Commissioner in all matters within his or her jurisdiction;
- 7 (4) Study the organization, programs and services of financial institutions and the laws  
 8 relating thereto in this state and in other jurisdictions and to report and recommend to the  
 9 Governor and the Legislature all such changes and amendments in laws, policies and procedures  
 10 relating thereto as it considers proper;
- 11 (5) Grant permission and authority to a financial institution:
- 12 (A) To participate in a public agency hereafter created under the laws of this state or of the  
 13 United States, the purpose of which is to afford advantages or safeguards to financial institutions  
 14 or to depositors therein and to comply with all lawful requirements and conditions imposed upon

15 those participants; and

16 (B) To pay interest on demand deposits of the United States or any agency thereof, if the  
17 payment of interest is permitted under any applicable federal law, rule or regulation; and

18 (6) Seek judicial enforcement to compel compliance with any of its orders and to seek and  
19 obtain civil penalties as set forth under this chapter.

20 (b) The Board also has the power, by entering appropriate orders, to:

21 (1) Restrict the withdrawal of deposits from any financial institution when, in the judgment  
22 of the board, extraordinary circumstances make the restrictions necessary for the protection of  
23 creditors of and depositors in the affected institution;

24 (2) Compel the holder of shares in any corporate financial institution to refrain from voting  
25 the shares on any matter when, in the judgment of the board, the order is necessary to protect the  
26 institution against reckless, incompetent or careless management, to safeguard funds of  
27 depositors in the institution or to prevent willful violation of any applicable law or of any rule and  
28 regulation or order issued thereunder. In such a case the shares of the holder may not be counted  
29 in determining the existence of a quorum or a percentage of the outstanding shares necessary to  
30 take any corporate action;

31 (3) Approve or disapprove applications to incorporate and organize state banking  
32 institutions in accordance with the provisions of sections six and seven, article four of this chapter;

33 (4) Approve or disapprove applications to incorporate and organize state-chartered  
34 bankers' banks in accordance with the provisions of sections six and seven, article four of this  
35 chapter;

36 (5) Exempt a bankers' bank from any provision of this chapter if the board finds that the  
37 provision is inconsistent with the purpose for which a bankers' bank is incorporated and organized  
38 and that the welfare of the public or any banking institution or other financial institution would not  
39 be jeopardized thereby;

40 (6) Revoke the certificate of authority, permit, certificate or license of any state banking

41 institution to engage in business in this state if that institution fails or refuses to comply with any  
42 order of the Commissioner entered pursuant to the provisions of paragraph (A) or (B), subdivision  
43 (15), subsection (c), section four, article two of this chapter, or at the board's election to direct the  
44 Commissioner to apply to any court having jurisdiction for a prohibitory or mandatory injunction or  
45 other appropriate remedy to compel obedience to such order;

46 (7) Suspend or remove a director, officer or employee of any financial institution who is or  
47 becomes ineligible to hold that position under any provision of law or rule and regulation or order,  
48 or who willfully disregards or fails to comply with any order of the board or Commissioner made  
49 and entered in accordance with the provisions of this chapter or who is dishonest or grossly  
50 incompetent in the conduct of financial institution business and prohibit that director, officer or  
51 employee from participating in the affairs of any other financial institution until further order of the  
52 board;

53 (8) To receive from state banking institutions applications to establish branch banks by the  
54 purchase of the business and assets and assumption of the liabilities of, or merger or  
55 consolidation with, another banking institution or by the construction, lease or acquisition of  
56 branch bank facilities in an unbanked area; examine and investigate such applications, to hold  
57 hearings thereon and to approve or disapprove such applications, all in accordance with section  
58 twelve, article eight of this chapter;

59 (9) Approve or disapprove the application of any state bank to purchase the business and  
60 assets and assume the liabilities of, or merge or consolidate with, another state banking institution  
61 in accordance with the provisions of section seven, article seven of this chapter;

62 (10) Approve or disapprove the application of any state bank to purchase the business and  
63 assets and assume the liabilities of a national banking association, or merge or consolidate with a  
64 national banking association to form a resulting state bank in accordance with the provisions of  
65 section seven, article seven of this chapter; and

66 (11) In addition to any authority granted pursuant to section twelve, article eight of this

67 chapter, incident to the approval of an application pursuant to subdivisions (7) or (8) of this  
68 subsection, permit the bank the application of which is so approved to operate its banking  
69 business under its name from the premises of the bank the business and assets of which have  
70 been purchased and the liabilities of which have been assumed by such applicant bank or with  
71 which the applicant bank has merged or consolidated: *Provided*, That this permission may be  
72 granted only if the board has made the findings required by subsection (f), section three of this  
73 article and such applicant bank has no common directors or officers nor common ownership of  
74 stock exceeding ten percent of total outstanding voting stock with the bank whose business and  
75 assets are being purchased and liabilities assumed, or with whom the applicant bank is being  
76 merged; and

77 (12) To receive an appeal from any party who is adversely affected by an order of the  
78 Commissioner issued pursuant to section twelve-d, article eight of this chapter and hold hearings  
79 in accordance with the provisions of article five, chapter twenty-nine-a of this code.

80 (c) A provision of this section may not be construed to alter, reduce or modify the rights of  
81 shareholders, or obligations of a banking institution in regard to its shareholders, as set forth in  
82 section one hundred seventeen, article one, chapter thirty-one of this code and section seven,  
83 article seven of this chapter, and other applicable provisions of this code.

84 (d) Any order entered by the West Virginia Board of Banking and Financial Institutions  
85 pursuant to this section is a matter of public record.

NOTE: The purpose of this bill is to reorganize the Board of Banking and Financial Institutions, the Division of Financial Institutions, and the Lending and Credit Rate Board as independent divisions within the executive branch subject to control and oversight by the Board to address the Division's extreme difficulty hiring and retaining bank examiners.

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