

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

House Bill 3269

By Delegate Criss

[Introduced March 07, 2025; referred to the
Committee on Finance]

1 A BILL to amend and reenact §5F-2-1, §31A-2-2, §31A-2-3, §31A-2-4, §31A-2-4a, §31A-2-4b,
2 §31A-2-5, §31A-2-6, §31A-2-7, §31A-2-8, §31A-2-9, §31A-2-12, §31A-2-14, §31A-3-1 and
3 §31A-3-2 of the Code of West Virginia, 1931, as amended; and to amend said code by
4 adding two new sections, designated §5F-2-1b and §5F-2-9; relating to reorganizing Board
5 of Banking and Financial Institutions, Division of Financial Institutions, and Lending and
6 Credit Rate Board into independent division and boards of the executive branch beginning
7 January 1, 2026; removing references to former Department of Banking; designating
8 Board of Banking and Financial Institutions as chief executive body under reorganization
9 structure; providing Division of Financial Institutions and Lending and Credit Rate Board
10 with oversight and supervision by Board of Banking and Financial Institutions; requiring
11 Board of Banking and Financial Institutions to approve any policy decision, proposed
12 budget, or personnel-related decision of Division of Financial Institutions; exempting
13 Division of Financial Institutions from classified service system; establishing merit-based
14 system for personnel administration for Division of Financial Institutions; authorizing
15 commissioner to establish merit-based system; authorizing current employees to opt into
16 classified-exempt system in writing; modifying qualifications for positions of commissioner
17 and deputy commissioner; providing for reimbursement of travel expenses; providing
18 uniformity in code to references of National Multistate Licensing System and Registry;
19 providing requirements for commissioner's merit-based policy for employment positions;
20 authorizing commissioner to employ additional staff; requiring commissioner to propose
21 annual budget to Board of Banking and Financial Institutions; requiring ten percent of total
22 revenue collected by commissioner be deposited into the General Revenue Fund of the
23 State Treasury; authorizing commissioner to employ additional support staff; providing that
24 balances of commissioner's assessment and examination fund remaining at end of each
25 fiscal year remain in the fund; requiring all fees not otherwise directed be deposited in
26 commissioner's assessment and examination fund; requiring commissioner by rule to

27 establish minimum standards and practices for the officers and directors of each financial
28 institution under the jurisdiction, supervision and control of the commissioner; requiring
29 reports to commissioner; requiring submission of plan to meet the minimum standards and
30 practices for approval to commissioner and the Board of Banking and Financial
31 Institutions; fixing compensation of the officers and directors of the financial institution
32 pending compliance; providing that commissioner as chairman of the Board of Banking
33 and Financial Institutions to vote only in instances of tie; requiring the Board of Banking
34 and Financial Institutions to meet bi-monthly; and removing requirement that
35 reimbursement of Board of Banking and Financial Institutions member expenses be
36 determined per policies of Travel Management Unit of Purchasing Division.

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;

(7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

(8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

(9) West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

(10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

(11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development;

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

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

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

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

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

(f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is continued as an agency within the Executive Branch as the Department of Arts, Culture, and History. All references throughout this code to the "Division of Culture and History" mean the "Department of Arts, Culture, and History".

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

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

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

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

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

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

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

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

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

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

(2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 *et seq.* of this code;

(4) Health Care Authority provided in §16-29B-1 *et seq.* of this code;

(5) The Developmental Disabilities Council established by Executive Order No. 6-88 and continued by Executive Order No. 15-99;

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

(1) Women's Commission provided in §29-20-1 *et seq.* of this code; and

(2) Bureau for Child Support Enforcement provided in §48-1-1 *et seq.* of this code.

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

(1) West Virginia State Police;

(2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided, That* notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule

promulgated thereunder, a reference is made to the Division of Homeland Security and Emergency Management, it shall be construed to mean the Division of Emergency Management;

(3) Division of Administrative Services;

(4) Division of Corrections and Rehabilitation;

(5) Fire Commission;

(6) State Fire Marshal;

(7) Board of Probation and Parole;

(8) The West Virginia Fusion Center;

(9) Division of Protective Services; and

(10) Any other agency or entity hereinafter established within the Department of Homeland Security by an act of the Legislature.

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

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

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

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

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

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

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

Provided, That beginning January 1, 2026, the Board is transferred out of the Department of Revenue and is an independent board pursuant to §5F-2-1b of this code;

(7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code: Provided, That beginning January 1, 2026, the Board is transferred out of the Department of Revenue and is an independent board pursuant to §5F-2-1b of this code;

(8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code: Provided, That beginning January 1, 2026, the Division is transferred out of the Department of Revenue and is an independent board pursuant to §5F-2-1b of this code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t) Subject to the provisions of §5F-2-1b, beginning January 1, 2026, the Board of Banking and Financial Institutions, as established in §31A-3-1 *et seq.* of this code, the Division of Financial Institutions as established in §31A-2-1 *et seq.* of this code, and the Lending and Credit Rate

Board, as established in §47A-1-1 *et seq.* of this code, are continued as a separate independent divisions 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.

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

(1) The Board of Banking and Financial Institutions, created under §31A-3-1 *et seq.* of this code, beginning January 1, 2026, is an independent board of the executive branch.

(2) Subject to the provisions of subsection (b) of this section, the Division of Financial Institutions, created under §31A-2-1 *et seq.* of this code, beginning January 1, 2026, is a separate and distinct division of the executive branch.

(3) Subject to the provisions of subsection (b) of this section, the Lending and Credit Rate Board, created under §47A-1-1 *et seq.* of this code, beginning January 1, 2026, is an independent board of the executive branch.

(b) Beginning January 1, 2026, the Board of Banking and Financial Institutions, the Division of Financial Institutions, and the Lending and Credit Rate Board are herein organized as independent separate and distinct agencies of the executive branch: *Provided*, That the Board of Banking and Financial Institutions shall be the chief executive body and shall exercise control and supervision over the Division of Financial Institutions and the Lending and Credit Rate Board. The Board of Banking and Financial Institutions shall oversee and approve any policy decision, proposed budget, or personnel-related decision of the Division of Financial Institutions and the

Lending and Credit Rate Board, subject to the powers reserved for the commissioner of the Division of Financial Institutions in §31A-2-1 et seq. of this code.

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

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

(b) The purpose of this section is to allow the division to employ qualified applicants in vacant and new personnel positions within the division in a timely manner and to ensure that the division maintains an adequate workforce to effectively and fairly administer, collect, and enforce the banking laws of this state.

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

(d) The commissioner of the Division of Financial Institutions shall develop a merit-based policy for the division. The procedure shall include classification specifications, seniority status, personnel qualifications, duties, maximum and minimum salary schedules and may include compensation adjustments, retention incentives, and hiring approval by the commissioner. The commissioner shall have the authority to evaluate applicants for employment or promotion or make classification determinations for positions within the merit-based system subject to approval or rejection by the Board of Banking and Financial Institutions pursuant to §5F-2-1 of this code. The pay rates and employment requirements shall be put into effect on or before January 1, 2026. This merit-based system shall apply to new employees in the above referenced job classifications and for existing employees who elect, in writing to enter the merit-based system. The merit-based system is exempt from the Division of Personnel and all requirements of §29-6-1 et seq. of this code and any related rules. There is no requirement for uniformity regarding the pay scale for the same classification between regions of the state to account for market rates and demand for specific positions. The provisions of §6C-2-1 et seq. of this code are not applicable. There is no right to 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.

The commissioner of banking is the chairman of the Board of Banking and Financial Institutions and the chief executive officer of the Division of Financial Institutions and shall be appointed by the Governor, by and with the advice and consent of the Senate. He or she shall serve at the will and pleasure of the Governor for the term for which the Governor was elected and until his or her successor is appointed and qualified, unless earlier removed from office for cause as provided by law.

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

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

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

Any person appointed as deputy commissioner shall be at least 30 years old and shall have had at least three five years' experience as an active executive officer of a bank in this state a bank president or managing officer of a bank or a minimum of three five years' experience in a bank regulator or supervisory capacity for this state, for other states, or for the federal government as a state or federal bank regulator, or a combination thereof. ~~or a minimum of four years'~~

~~combined experience as such active bank executive officer and in such examining or supervisory capacity~~

Before entering upon the discharge of the duties of his office, the deputy commissioner shall comply with the same oath and bond requirements prescribed for the commissioner in §31A-2-2 of this code.

In the event of a vacancy in the office of the commissioner or in the event of the disability or absence from the state of the commissioner, the deputy commissioner shall have and may exercise all of the authority and powers of the commissioner and shall be responsible for the 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.

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

(b) The commissioner shall:

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

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

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

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

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

(A) Applicant seeking approval to charter and/or control a state bank, state credit union, or a foreign bank state agency or representative office;

(B) Applicant seeking a license to engage in the business of money transmission, currency 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

contracts with the Nationwide ~~Mortgage~~ Multistate Licensing System and Registry or other entities designated by the Nationwide ~~Mortgage~~ Multistate Licensing System and Registry to collect and maintain records related to criminal background investigations and fingerprints of persons subject to this subsection.

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

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

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

(d) The commissioner shall prepare and propose an annual budget for the Division of Financial Institutions to the Board of Banking and Financial Institutions. The commissioner may appoint a Budget Director to assist with managing the financial accounts and assets of the division. Effective January 1, 2026, and each year thereafter, ten percent of all annual revenue collected by the commissioner shall be deposited to the General Revenue Fund of the State Treasury. The commissioner's proposed budget shall be submitted to the Board of Banking and Financial Institutions for approval pursuant to §5F-2-1b of this code.

93 ~~(c)~~(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 and §31A-3-1 et seq. of this code, the commissioner may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) In connection with the investigations required by §31A-2-4(b)(3) of this code, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served,

and enforced in the manner provided in §29A-5-1 of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) No person shall operate an office in West Virginia which regularly makes consumer loans in this state other than first mortgage loans unless they are a financial institution, licensed pawnbroker or a federally insured depository institution authorized and qualified to do business in this state. The purchase of consumer paper does not constitute the making of consumer loans for

the purposes of this subsection, unless the purchase is made by a business affiliated with the credit provider pursuant to a standing arrangement.

(c) Application for such license or certificate shall be upon such forms and contain such information as the Commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

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

(e) In addition to the requirements of subsections (b) and (c) of this section, every foreign 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 30th 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 20 days after it is received by him or her, it shall be deemed to have been approved.

65 (h) Unless specifically provided for by this chapter, nothing contained in this code shall
66 authorize any person to engage in the banking business in this state except corporations
67 chartered to conduct a banking business under the laws of West Virginia and which hold a license
68 or certificate to do so issued under this section, limited liability companies organized to conduct a
69 banking business under the laws of West Virginia and which hold a license or certificate to do so
70 under this section or associations authorized to conduct a banking business in West Virginia under
71 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

the financial institution, the relations between the financial institution and its subsidiaries and affiliates and the effect of the relations upon the affairs of the financial institution. A full report of every examination shall be made and filed and preserved in the office of the commissioner and a copy of it immediately mailed to the institution examined. Every institution shall retain all of its records of final entry for the period of time as required in section thirty-five, article four of this chapter for banking institutions. Unless otherwise covered by assessments or a specific provision of this code, the cost of examinations made pursuant to this section shall be borne by the financial institution at a rate of \$50 per each examiner hour expended.

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

(c) The Commissioner of Banking, in his or her discretion, may: (i) Accept a copy of a reasonably current examination of any banking institution made by the Federal Deposit Insurance Corporation or the Federal Reserve System in lieu of an examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to the Federal Deposit Insurance Corporation or the Federal Reserve System or to any official or examiner thereof any copy or copies of the commissioner's examinations of and reports on the banking institutions; (ii) accept a copy of a reasonably current examination of any out-of-state bank or any West Virginia state bank's out-of-state activities made by another state's banking regulatory authority in lieu of an examination of the banking institution required or authorized to be made by the laws of this state and the commissioner may furnish to the other state's banking regulatory 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 §31A-2-4 of this code.

**§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 §31A-8-15 of this code.

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

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the "commissioner's assessment and examination fund" which is hereby ~~established~~ continued. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section. ~~The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the Division of Banking Financial Institutions and all incidental costs and expenses necessary for its operations~~ All fees not otherwise directed shall be deposited in the commissioner's assessment and examination fund. ~~At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent fifty percent of the appropriated budget of the Division of Banking, the amount of the excess shall be transferred to the General Revenue Fund of the state. The Legislature may appropriate money to start the special revenue account~~

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

Total Assets

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.

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

(3) For each credit union, an annual assessment as provided for in §31C-1-8 of this code as follows:

Total Assets

	But Not	This		Of Excess
Over	Over	Amount	Plus	Over
\$ 0	\$ 100,000	100	-	-
100,000	500,000	300	-	-
500,000	1,000,000	500	-	-
1,000,000	5,000,000	500	.000400	1,000,000
5,000,000	10,000,000	2,100	.000200	5,000,000
10,000,000	-	3,100	.000100	10,000,000

(4) For each bank holding company, an annual assessment as provided for in §31A-8A-8 of this code. The annual assessment may not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

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

State banking institution assessments may be prescribed every three months, not later than June 15, September 15, December 15 and March 15 by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the

assessments the primary consideration shall be the amount appropriated by the Legislature for the Division of ~~Banking~~ Financial Institutions for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act under chapter 29A of this code.

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

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

(f) The Commissioner ~~of Banking~~ may maintain an action for the recovery of all 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; rule requiring minimum standards and practices; compensation pending compliance.

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.

22 (d) In order to foster and promote sound and dynamic financial institutions in this state as
23 expressed in §31A-1-1 of this code, the commissioner shall by rule establish minimum standards
24 and practices for the officers and directors of each financial institution under the jurisdiction,
25 supervision and control of the commissioner that the commissioner determines may be warranted
26 to improve the viability of those institutions and the safety of their customer's assets, including, but

not limited to, minimum percentages of returns on assets, minimum percentages of returns of investments and minimum ratios of efficiency. The rule shall also require each of the financial institutions to provide to the commissioner its reports, with such frequency as the commissioner may determine appropriate, demonstrating the financial institution's compliance with the minimum standards and practices. If the commissioner determines that a financial institution is not complying with the minimum standards and practices, the commissioner shall notify the financial institution. Upon receipt of the notice, the officers and directors of the financial institution shall submit for approval to the commissioner and the Board of Banking and Financial Institutions its plan to meet the minimum standards and practices. From the date of the notice until the commissioner and the Board determine that the financial institution is complying with the minimum standards and practices, the compensation of the officers and directors of the financial institution shall not exceed the compensation approved for each by the Board.

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

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

Such report shall be verified by the affidavit of said commissioner, who shall swear that, in making the examination of each financial institution he or a qualified person in his or her department appointed by him or her has personally and carefully inspected the books, papers and affairs of the institution, or in the case of any banking institution, that he or she has accepted a reasonably current examination made by the federal deposit insurance corporation or the federal

14 reserve system in lieu of conducting such an examination, and that he or she has not, and, so far
15 as he knows or is informed, no person in his department has, in any case received or agreed to
16 receive directly or indirectly any reward, gift, or promise thereof, from any officer or other person
17 connected with any 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~~ division receive, directly or
4 indirectly, any payment or gratuity from any financial institution, or be engaged in any manner in
5 the negotiation of loans for others therewith. Nothing herein shall prohibit said persons from having
6 shares as a result of membership in a credit union, mutual savings association, or similar
7 depository institution by virtue of being a customer; nor shall it prohibit the receipt of interest or
8 other payments on 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 60 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~~ every two months. The
28 commissioner may, upon his or her own motion, or shall upon the written request of three
29 members of the board, call additional meetings of the board upon at least 24 hours' notice. A
30 member shall not participate in a proceeding before the board to which a corporation, partnership
31 or unincorporated association is a party and of which he or she is, or was at any time in the
32 preceding 12 months, a director, officer, owner, partner, employee, member or stockholder. A
33 member may disqualify himself or herself from participation in a proceeding for any other cause
34 determined by him or her to be sufficient. Each member shall receive compensation in an amount

equal to that authorized by §4-2A-5 of this code for members of the Legislature for interim duties for each day or portion of a day spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary actual expenses incurred incident to his or her duties as a member of the board. ~~as determined in accordance with regulations and policies issued by the travel management unit of the state Purchasing Division~~

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

§31A-3-2. General powers and duties.

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

(1) Regulate its own procedure and practice;

(2) Promulgate reasonable rules to implement any provision of this article in accordance with the provisions of §29A-3-1 *et seq.* of this code;

(3) Advise the Commissioner in all matters within his or her jurisdiction;

(4) Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions and to report and recommend to the Governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as it considers proper;

(5) Grant permission and authority to a financial institution:

(A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein and to comply with all lawful requirements and conditions imposed upon those participants; and

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

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

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

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

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

(3) Approve or disapprove applications to incorporate and organize state banking institutions in accordance with the provisions of §31A-4-6 and §31A-4-7 of this code;

(4) Approve or disapprove applications to incorporate and organize state-chartered bankers' banks in accordance with the provisions of §31A-4-6 and §31A-4-7 of this code;

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

(6) Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if that institution fails or refuses to comply with any order of the Commissioner entered pursuant to the provisions of §31A-2-4(c)(15)(A) or (B) of this code, or at the board's election to direct the Commissioner to apply to any court having jurisdiction

for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order;

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

(8) To receive from state banking institutions applications to establish branch banks by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution or by the construction, lease or acquisition of branch bank facilities in an unbanked area; examine and investigate such applications, to hold hearings thereon and to approve or disapprove such applications, all in accordance with §31A-8-12 of this code;

(9) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution in accordance with the provisions of §31A-7-7 of this code;

(10) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of a national banking association, or merge or consolidate with a national banking association to form a resulting state bank in accordance with the provisions of §31A-7-7 of this code; and

(11) In addition to any authority granted pursuant to §31A-8-12 of this code, incident to the approval of an application pursuant to subdivisions (7) or (8) of this subsection, permit the bank the application of which is so approved to operate its banking business under its name from the premises of the bank the business and assets of which have been purchased and the liabilities of

69 which have been assumed by such applicant bank or with which the applicant bank has merged or
70 consolidated: *Provided*, That this permission may be granted only if the board has made the
71 findings required by §31A-3-3(f) of this code and such applicant bank has no common directors or
72 officers nor common ownership of stock exceeding 10 percent of total outstanding voting stock
73 with the bank whose business and assets are being purchased and liabilities assumed, or with
74 whom the applicant bank is being merged; and

75 (12) To receive an appeal from any party who is adversely affected by an order of the
76 Commissioner issued pursuant to §31A-8-12d of this code and hold hearings in accordance with
77 the provisions of §29A-5-1 *et seq.* of this code.

78 (c) A provision of this section may not be construed to alter, reduce or modify the rights of
79 shareholders, or obligations of a banking institution in regard to its shareholders, as set forth in
80 §31-1-117 of this code and §31A-7-7 of this code, and other applicable provisions of this code.

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