WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 42

(By Mr. Rockefeller and Mr. McCan)

PASSED March 19, 1967

In Effect Ninety days from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-67
ENROLLED
JUDICIARY
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 42
(Mr. Moreland and Mr. McKown original sponsors).

[Passed March 10, 1967; in effect ninety days from passage.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to secondary mortgage loans; providing for the qualification, regulation and licensing of persons engaged as lenders or brokers in the secondary mortgage loan business; relating to the responsibilities, duties and powers of the commissioner of banking in connection therewith; specifying the interest and charges to be paid by a borrower with respect to a secondary mortgage loan;
authorizing injunctive relief; declaring secondary mortgage loans made in violation of certain provisions of the article to be void; and providing penalties and a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seventeen, to read as follows:

ARTICLE 17. SECONDARY MORTGAGE LOANS.

§31-17-1. Definitions and general provisions.

As used in this article:

(1) "Secondary mortgage loan" means a loan made to an individual or partnership which is secured in whole or in part by a mortgage or deed of trust upon any interest in real property used as a dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages, deeds of trust or vendor's liens.

(2) "Person" means an individual, partnership, association, trust, corporation, or any other legal entity, or any combination thereof.
(3) "Lender" means any person who makes or offers to make or accepts or offers to accept any secondary mortgage loan in the regular course of business. A person shall be deemed to be acting in the regular course of business if he makes or accepts, or offers to make or accept, more than five secondary mortgage loans in any one calendar year.

(4) "Broker" means any person who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, a secondary mortgage loan between a lender and a borrower.

(5) "Brokerage fee" means the fee or commission or other consideration charged by a broker for the services described in paragraph (4) of this section.

(6) "Principal" or "principal sum" means the sum delivered to the borrower by the lender, or expended by the lender to third party creditors of the borrower for the discharge of pre-existing debts of such borrower.

(7) "Charge" or "charges" means every type of charge incident to or arising out of the making or acceptance of a secondary mortgage loan, except interest, including, by
whatever name called, but not by way of limitation, title search fees, title report fees, title opinion fees, title guarantee fees, credit report fees, investigation costs, investigation report costs, legal fees, fees for the preparation of instruments, placement fees, discount fees, brokerage fees, recording fees, appraisal costs, closing costs, and insurance costs, except as provided in subsection (c), section eight of this article with respect to hazard insurance.

(8) “Interest” means the compensation, other than a charge or charges, to be paid for the loan of the principal or principal sum.

(9) “Placement fee” or “discount fee” means a deduction from the principal or principal sum by the lender at the time of the making or accepting of a secondary mortgage loan, which deduction is ultimately charged to or placed upon the borrower.

(10) “Commissioner” means the commissioner of banking of this state.

(11) “Applicant” means a person who has applied for a lender’s or broker’s license.
(12) “Licensee” means any person duly licensed by the commissioner under the provisions of this article as a lender or broker.

§31-17-2. License required; exemptions.

(a) No person shall engage in this state in the business of lender or broker unless and until he shall first obtain a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation shall, notwithstanding the provisions of section seventy-nine-a, article one of this chapter, engage in such business in this state unless it shall qualify to hold property and transact business in this state: Provided, That during the first ninety days after the effective date of this article any person who has filed an application for a lender's broker's license and whose application for such license has not been denied and the license sought refused may engage in the business of lender or broker, as the case may be, without a lender's or broker's license, until his application is ruled upon and thereafter if the same is granted and the license sought is issued.
(b) The provisions of this article do not apply to loans made by banking institutions, trust companies, savings and loan associations, building and loan associations, industrial loan companies, insurance companies, credit unions or small loan companies pursuant to article seven-a, chapter forty-seven of this code, or to loans made by any other lender licensed by and under the supervision of the commissioner by authority of any other provisions of this code or licensed by and under the supervision of any agency of the federal government, or to loans made by any agency of the federal government.

§31-17-3. Supervision by commissioner; rules and regulations; personnel.

It shall be the duty of the commissioner to enforce the provisions of this article, and, to implement and make effective such provisions, he is hereby authorized and empowered to promulgate reasonable rules and regulations, in accordance with the provisions of article three, chapter twenty-nine-a of this code, and to employ such personnel as may be necessary.
§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.

(a) Application for a lender's or broker's license shall be in writing under oath, in the form prescribed by the commissioner, and shall contain the full name and address (both of the residence and place of business) of the applicant and, if the applicant is a partnership or association, of every member thereof, and, if a corporation, of each officer, director and owner of five per cent or more of the capital stock thereof, and such further information as the commissioner may reasonably require. Any application shall also disclose the location in this state at which the business of lender or broker is to be conducted.

(b) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that such applicant has qualified to hold property and transact business in this state;

(2) Submit proof that he has available for the operation of the business at the location specified in the

...
application net assets of at least two hundred fifty thou-
sand dollars.

(3) File with the commissioner a bond in favor of
the state in the amount of one hundred thousand dollars,
in such form and with such conditions as the commissioner
may prescribe, and executed by a surety company author-
ized to do business in this state; and

(4) Pay to the commissioner a license fee of one
thousand dollars and an investigation fee of two hundred
fifty dollars. If the commissioner shall determine that an
investigation outside this state is required to ascertain
facts or information relative to the applicant or infor-
mation set forth in the application, the applicant may be
required to advance sufficient funds to pay the estimated
cost of such investigation. An itemized statement of the
actual cost of the investigation outside this state shall be
furnished to the applicant by the commissioner, and the
applicant shall pay or shall have returned to him, as the
case may be, the difference between his payment in ad-
vance of the estimated cost and the actual cost of such in-
vestigation.
(c) At the time of making application for a broker's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that such applicant has qualified to hold property and transact business in this state;

(2) Submit proof that he has available for the operation of the business at the location specified in the application net assets of at least ten thousand dollars;

(3) File with the commissioner a bond in favor of the state in the amount of ten thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state; and

(4) Pay to the commissioner a license fee of one hundred dollars and an investigation fee of fifty dollars.

Every individual applicant for a broker's license, and if the applicant is a partnership or association, every member thereof, shall be at the time of the filing of the application for such license a bona fide resident of this state and shall have been such a resident for a period
of at least one year prior to the date of such filing. In the case of a corporate applicant for a broker's license, the owner or owners of at least fifty-one per cent of the capital stock of such corporation shall be at the time of the filing of the application for such license bona fide residents of this state and shall have been such residents for a period of at least one year prior to the date of such filing.

(d) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of such bond.

§31-17-5. Refusal or issuance of license.

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to such applicant and his application for a lender's or broker's license, as the case may be. Upon the basis of the application and all other information before him, the commissioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:
(1) The applicant does not have available the net assets required by the provisions of section four of this article;

(2) The applicant (individually, if an individual, or the partners, if a partnership, or the officers and directors, if a corporation) is of such character and reputation as reasonably to warrant the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article;

(3) In the case of an application for a broker's license, the applicant does not meet the residency qualifications specified in said section four;

(4) The applicant has habitually defaulted on financial obligations; or

(5) The applicant has done any act or has failed or refused to perform any duty or obligation for which the license sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant a lender's or broker's license which shall entitle such applicant to engage in the business of lender or broker, as the

31 case may be, during the period, unless sooner suspended
32 or revoked, for which the license is issued.
33 (b) Every application for a lender’s or broker’s license
34 shall be passed upon and the license issued or refused
35 within forty-five days after the applicant therefor has
36 fully complied with the provisions of section four of this
37 article. Under no circumstances whatever shall the same
38 person hold both a lender’s and a broker’s license. When-
39 ever an application for a lender’s or broker’s license is
40 denied and the license sought is refused, which refusal
41 has become final, the commissioner shall retain the in-
42 vestigation fee or fees but shall return the license fee to
43 the applicant.

§31-17-6. Minimum net assets to be maintained; bond to be
kept in full force and effect; broker residency quali-
fications to be maintained; foreign corporation to re-
main qualified to do business in this state.

At all times, a licensee shall (1) have available the net
2 assets required by the provisions of section four of this
3 article, (2) keep the bond required by said section four
4 in full force and effect, (3) if such licensee be a broker,
continue to meet the residency qualifications set forth in said section four, and (4) if such licensee be a foreign corporation, remain qualified to hold property and transact business in this state.

§31-17-7. Form of license; posting of license required; license not transferable or assignable; one location only; renewal of license.

(a) It shall be stated on the license whether it is a lender's or broker's license, the location at which the business is to be conducted and the full name of the licensee. A broker's license shall be conspicuously posted in the licensee's place of business in this state, and a lender's license shall be conspicuously posted in the licensee's place of business if in this state. No license shall be transferable or assignable. Not more than one location or place of business in this state shall be maintained under the same license, but the commissioner is authorized to issue more than one license to the same licensee upon compliance with all the provisions of this article governing the original issuance of a license. Whenever a licensee changes his place of business to a location other than that
set forth in his license, he shall give written notice within thirty days of such change to the commissioner.

(b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire on December thirty-first of each year, and any such license may be renewed each year in the same manner, for the same license fee and investigation fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of section five of this article. All applications for the renewal of licenses shall be filed with the commissioner at least forty-five days before the expiration thereof.

§31-17-8. Maximum period of a secondary mortgage loan; maximum interest and charge or charges on a secondary mortgage loan; insurance; other prohibitions.

(a) A secondary mortgage loan shall be payable over a period not in excess of sixty months, and the maximum rate of interest and maximum total charge or charges on or in connection with any such secondary mortgage loan shall be as follows:

(1) The maximum rate of interest on the principal
7 sum shall be six dollars upon each one hundred dollars
8 for a year, and proportionately for a greater or lesser
9 sum, or for a longer or shorter time: Provided, That the
10 borrower shall have the right to anticipate payment of
11 his debt in whole or in part at any time and shall receive
12 a rebate for any unearned interest, which rebate shall
13 be computed in accordance with the “Standard Rule
14 of 78”;
15 (2) The total charge or charges may equal, but
16 shall not be in excess of, ten per cent of the principal
17 sum: Provided, however, That where the principal sum
18 at the inception of the secondary mortgage loan is one
19 thousand five hundred dollars or less, the total charge
20 or charges may exceed said ten per cent, but shall not
21 be in excess of one hundred fifty dollars: Provided fur-
22 ther, That such charges may not be imposed more often
23 than once each thirty-six months by renewal of a sec-
24 ondary mortgage loan or an additional secondary mort-
25 gage loan on the same residential property.
26 (b) Notwithstanding the provisions of subsection (a)
27 of this section, a delinquent or “late charge” not exceed-
ing five per cent of the monthly payment, may be charged on any installment made fifteen or more days after the regularly scheduled due date, said charge to be made only once on any one installment during the term of the secondary mortgage loan.

(c) Hazard insurance may be required by the lender of the borrower and the premium shall not be considered as a charge. Decreasing term life insurance, in an amount not exceeding the amount of the secondary mortgage loan and for a period not exceeding the term of such loan, and accident and health insurance in an amount sufficient to make the monthly payments due on said loan in the event of the disability of the borrower and for a period not exceeding the life of said loan, may also be required by the lender of the borrower and the premium therefor, if included in the loan, may bear interest, and may be included in computing the charge or charges, but shall not exceed the standard rate approved by the insurance commissioner for such insurance. Proof of all insurance in connection with secondary mortgage loans subject to this article shall be furnished to the borrower
within ten days from and after the date of application therefor by said borrower.

(d) No application fee may be allowed whether or not the secondary mortgage loan is consummated; however, the borrower may be required to reimburse the lender for actual expenses incurred by the lender after acceptance and approval of a secondary mortgage loan proposal made in accordance with the provisions of this article which is not consummated because of:

(1) The borrower's wilful failure to close said loan;

or

(2) The borrower's false or fraudulent representation of a material fact which prevents closing of said loan as proposed.

(e) No licensee shall make, offer to make, accept or offer to accept, any secondary mortgage loan except on the terms and conditions authorized in this article.

(f) No licensee shall induce or permit any husband and wife, jointly and severally, to become obligated to such licensee under this article, directly or contingently, or both, under more than one secondary mortgage loan
at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(g) No instrument evidencing or securing a secondary mortgage loan shall contain:

(1) Any acceleration clause under which any part or all of the unpaid balance of the obligation not yet matured may be declared due and payable because the holder deems himself to be insecure;

(2) Any power of attorney to confess judgment or any other power of attorney;

(3) Any provision whereby the borrower waives any rights accruing to him under the provisions of this article;

(4) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount; or

(5) Any assignment of or order for the payment of any salary, wages, commissions, or other compensation for services, or any part thereof, earned or to be earned.
§31-17-9. Disclosure; closing statements; other records required.

(a) Any licensee or person making on his own behalf, or as agent, broker, or in other representative capacity on behalf of any other person, a secondary mortgage loan, whether lawfully or unlawfully, shall at the time of the closing furnish to the borrower a complete and itemized closing statement which shall show in detail:

1. The amount and date of the note or secondary mortgage loan contract and the date of maturity;
2. The nature of the security;
3. The interest and charges;
4. The principal of the loan before adding the interest and charges;
5. Disposition of the principal;
6. A description of the payment schedule;
7. The terms on which additional advances, if any, will be made;
8. The charge to be imposed for past due installments;
(9) A description of insurance required by the lender or purchased by the borrower in connection with the secondary mortgage loan;

(10) The name and address of the borrower and of the lender; and

(11) That the borrower may prepay the secondary mortgage loan in whole or in part on any installment date, and that the borrower will receive a rebate in full for any interest prepayment.

Such detailed closing statement shall be signed by the lender or his representative, and a completed and signed copy thereof shall be retained by the lender and made available at all reasonable times to the borrower, the borrower's successor in interest to the residential property, or the authorized agent of the borrower or the borrower's successor, until such time as the indebtedness shall be satisfied in full.

The commissioner may, from time to time, by rules and regulations prescribe additional information to be included in a closing statement.
(b) Upon written request from the borrower, the holder of a secondary mortgage loan instrument shall deliver to the borrower, within ten days from and after receipt of such written request, a statement of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. Not more than two such statements shall be requested in any twelve-month period.

(c) Upon satisfaction of a secondary mortgage loan obligation in full, the holder of the instrument evidencing or securing such obligation shall deliver to the borrower a recordable release and all writings signed by the borrower which were incident to applying for and obtaining such secondary mortgage loan.

§31-17-10. Advertising requirements.

It shall be unlawful for any person to cause to be placed before the public in this state, directly or indirectly, any false, misleading or deceptive advertising matter pertaining to secondary mortgage loans or the availability thereof: Provided, That this section shall not apply to the owner, publisher, operator or employees of any publica-
tion or radio or television station which disseminates such
advertising matter without actual knowledge of the false
or misleading character thereof.

§31-17-11. Records and reports; examination of records;
analysis.

(a) Every licensee shall maintain at his place of busi-
ness in this state, if any, or if he has no place of business
in this state at his principal place of business outside this
state, such books, accounts and records relating to all
transactions within this article as are necessary to enable
the commissioner to enforce the provisions of this article.
All such books, accounts and records shall be preserved,
exhibited to the commissioner and kept available as pro-
vided herein for such reasonable period of time as the
commissioner may by rules and regulations require. The
commissioner is hereby authorized to prescribe by rules
and regulations the minimum information to be shown in
such books, accounts and records.

(b) Each licensee shall file with the commissioner on
or before the fifteenth of April of each year a report under
oath or affirmation concerning his business and operations
in this state for the preceding license year in the form
prescribed by the commissioner, which shall show the
annual volume and outstanding amounts of secondary
mortgage loans, the classification of such secondary mort-
gage loans by size and by security, and the gross income
from, and expenses properly chargeable to, such secon-
dary mortgage loans.

(c) At least once each year the commissioner shall
make or cause to be made an examination of the books,
accounts and records of every licensee pertaining to sec-
ondary mortgage loans made in this state under the pro-
visions of this article, for the purpose of determining
whether each licensee is complying with the provisions
hereof and for the purpose of verifying each licensee's
annual report. If the examination is made outside this
state, the licensee shall pay the cost thereof in like manner
as applicants are required to pay the cost of investigations
outside this state.

(d) The commissioner shall publish annually an an-
alysis of the information furnished in accordance with the
provisions of subsection (b) of this section, but the in-
38 individual reports shall not be public records and shall not be open to public inspection.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

(a) The commissioner may suspend or revoke any license issued hereunder if he finds that the licensee and/or any owner, director, officer, member, partner, stockholder, employee or agent of such licensee:

1. Has knowingly violated any provision of this article or any order, decision or rule and regulation of the commissioner lawfully made pursuant to the authority of this article; or

2. Has knowingly made any material misstatement in the application for such license; or

3. Does not have available the net assets required by the provisions of section four of this article; or

4. Has failed or refused to keep the bond required by section four of this article in full force and effect; or

5. In the case of a broker's license, does not continue to meet the residency qualifications set forth in section four of this article; or
(6) In the case of a foreign corporation, does not remain qualified to do business in this state; or

(7) Has committed any fraud or engaged in any dishonest activities with respect to such secondary mortgage loan business in this state, or failed to disclose any of the material particulars of any secondary mortgage loan transaction in this state to anyone entitled to such information; or

(8) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purposes of this article.

The commissioner may also suspend or revoke the license of a licensee if he finds the existence of any ground upon which the license could have been refused, or any ground which would be cause for refusing a license to such licensee were he then applying for the same.

(b) The suspension or revocation of the license of any licensee shall not impair or affect the obligation of any pre-existing lawful secondary mortgage loan between such licensee and any obligor.
40 (c) The commissioner may reinstate a suspended license, or issue a new license to a licensee whose license has been revoked, if the grounds upon which any such license was suspended or revoked have been eliminated or corrected and the commissioner is satisfied that such grounds are not likely to recur.

§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

(a) Whenever the commissioner shall refuse to issue a license, or shall suspend or revoke a license, he shall make and enter an order to that effect and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee, as the case may be.

(b) Whenever a license is suspended or revoked, the commissioner shall in the order of suspension or revocation direct the licensee to return to the commissioner his license. It shall be the duty of the licensee to comply with any such order following expiration of the period provided in section fourteen of this article in which such
licensee may demand a hearing before the commissioner without such demand having been timely made, and immediately if the license were suspended for failure to keep the bond required by the provisions of section four of this article in full force and effect.

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

(a) Any applicant or licensee, as the case may be, adversely affected by an order made and entered by the commissioner in accordance with the provisions of section thirteen of this article may in writing demand a hearing before the commissioner. The written demand for a hearing must be filed with the commissioner within thirty days after the date upon which the applicant or licensee was served with a copy of such order. The timely filing of a written demand for hearing shall stay or suspend execution of the order in question, pending a final determination, except for an order suspending a license for failure of the licensee to keep the bond required by the provisions of section four of this article in full force and effect. If a written demand is timely filed
as aforesaid, the aggrieved party shall be entitled to a
hearing as a matter of right.

(b) All of the pertinent provisions of article five, chap-
ter twenty-nine-a of this code shall apply to and govern
the hearing and the administrative procedures in connec-
tion with and following such hearing, with like effect as
if the provisions of said article five were set forth in
extenso in this subsection.

(c) For the purpose of conducting any such hearing
hereunder, the commissioner shall have the power and
authority to issue subpoenas and subpoenas duces tecum,
in accordance with the provisions of section one, article
five, chapter twenty-nine-a of this code. All subpoenas
and subpoenas duces tecum shall be issued and served in
the manner, within the time and for the fees and shall
be enforced, as specified in section one, article five of said
chapter twenty-nine-a, and all of the said section one
provisions dealing with subpoenas and subpoenas duces
tecum shall apply to subpoenas and subpoenas duces
tecum issued for the purpose of a hearing hereunder.

(d) Any such hearing shall be held within twenty days
after the date upon which the commissioner received the
timely written demand therefor, unless there is a post-
ponement or continuance. The commissioner may post-
pone or continue any hearing on his own motion, or for
good cause shown upon the application of the aggrieved
party. At any such hearing, the aggrieved party may
represent himself or be represented by any attorney at
law admitted to practice before any circuit court of this
state.

(e) After such hearing and consideration of all of the
testimony, evidence and record in the case, the commis-
sioner shall make and enter an order affirming, modifying
or vacating his earlier order, or shall make and enter such
order as is deemed appropriate, meet and proper. Such
order shall be accompanied by findings of fact and con-
clusions of law as specified in section three, article five,
chapter twenty-nine-a of this code, and a copy of such
order and accompanying findings and conclusions shall
be served upon the aggrieved party and his attorney of
record, if any, in person or by certified mail, return receipt
requested, or in any other manner in which process in a
57 civil action in this state may be served. The order of the
58 commissioner shall be final unless vacated or modified on
59 judicial review thereof in accordance with the provisions
60 of section fifteen of this article.

(a) Any person adversely affected by a final order
2 made and entered by the commissioner after hearing held
3 in accordance with the provisions of section fourteen of
4 this article is entitled to judicial review thereof. All of
5 the pertinent provisions of section four, article five, chap-
6 ter twenty-nine-a of this code shall apply to and govern
7 such review with like effect as if the provisions of said sec-
8 tion four were set forth in extenso in this section.
9 (b) The judgment of the circuit court shall be final
10 unless reversed, vacated or modified on appeal to the
11 supreme court of appeals in accordance with the pro-
12 visions of section one, article six, chapter twenty-nine-a of
13 this code.
14 (c) Legal counsel and services for the commissioner in
15 all appeal proceedings in any circuit court and the
16 supreme court of appeals shall be provided by the at-
torney general or his assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§31-17-16. Actions to enjoin violations.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, any rules and regulations of the commissioner or any final order of the commissioner, the commissioner may apply in the name of the state, to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section eighteen of this article.
18. (b) Upon application by the commissioner as aforesaid, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, any rules and regulations of the commissioner and all final orders of the commissioner. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

19. (c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

20. (d) The commissioner shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation.

§31-17-17. Loans made in violation of this article void; agreements to waive article void.

(a) If any secondary mortgage loan is made in viola-
tion of the provisions of this article, except as a result
of a bona fide error, such loan shall be void and neither
the lender nor any holder of the obligation secured by
such secondary mortgage shall have the right to collect
or receive any principal, interest or charges whatsoever,
and the lender shall refund all payments on or with
respect to such loan which have been made by the
borrower.
(b) Any agreement whereby the borrowed waives the
benefits of this article shall be deemed to be against pub-
lic policy and void.
§31-17-18. Violations and penalties.

Any person, or any member, officer, director, agent, or
employee of such person, who violates or participates in
the violation of this article shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be punished
by a fine of not more than five hundred dollars, or by
imprisonment of not more than six months, or by both
such fine and imprisonment, in the discretion of the
court.
§31-17-19. **Severability.**

If any provision of this article or its application to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are hereby declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tamar
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Hiram W. Hays
Clerk of the Senate

Clerk of the House of Delegates

Howard T. Caroe
President of the Senate

W. Laban White
Speaker House of Delegates

The within approved this the 17

day of March, 1967.

Hackett C. Smith
Governor
PRESENTED TO THE GOVERNOR

Date  3/17/67

Time  3:21 p.m.