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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



ENROLLED

House Bill No. 4139

(By Delegates Thompson and Staton)



Passed March 10, 2000

In Effect Ninety Days from Passage

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H. B. 4139

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AN ACT to amend and reenact sections one, two, four, seven, eight, nine, ten, eleven, twelve, fourteen and seventeen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred five, article one, chapter forty-six-a of said code; and to amend and reenact sections one hundred two and one hundred nine, article four of said chapter, all relating to the regulation of residential mortgage lenders and brokers; providing definitional changes; changing reference to secondary mortgage to primary and subordinate mortgages; eliminating the term restrictions on subordinate lien mortgage loans; requiring licenses for primary and subordinate mortgage brokers and lenders; establishing broker and lender licensing requirements, form of licenses, license fees, bonding and net worth requirements; extending present licenses for one year; limiting interest rates on subordinate loans; requiring rebate of unearned finance charges on loan prepayments; restricting charges unless loans made; requiring rebates on refinancing transactions by lenders and their affiliates; defining affiliates; prohibiting loan application fees; providing borrower protection provisions; prohibiting fees not disclosed to borrowers and for products and services not

rendered; prohibit intimidation of appraisers; prohibit loans made with the intent of foreclosure; prohibit fees and points in excess of limits; prohibit certain loan practices; allowing compliance with federal disclosures to meet state law disclosure requirements; limiting interest rates on primary and subordinate loans; providing civil remedies for willful violations; providing excuses from inadvertent violations; allowing the commissioner to appoint a hearing examiner in contested cases; and providing similar restrictions and limitations on charges for refinancing transactions by regulated consumer lenders.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, seven, eight, nine, ten, eleven, twelve, fourteen and seventeen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one hundred five, article one, chapter forty-six-a of said code be amended and reenacted; and that sections one hundred two and one hundred nine, article four of said chapter be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 17. MORTGAGE LOANS.

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

1 As used in this article:

2 (1) “Primary mortgage loan” means a loan made to an
3 individual which is secured in whole or in part by a primary
4 mortgage or deed of trust upon any interest in real property
5 used as a residential dwelling with accommodations for not
6 more than four families.

7 (2) “Subordinate mortgage loan” means a loan made to an
8 individual which is secured in whole or in part by a mortgage
9 or deed of trust upon any interest in real property used as a

10 residential dwelling with accommodations for not more than
11 four families, which property is subject to the lien of one or
12 more prior recorded mortgages or deeds of trust.

13 (3) "Person" means an individual, partnership, association,
14 trust, corporation or any other legal entity, or any combination
15 thereof.

16 (4) "Lender" means any person who makes or offers to
17 make or accepts or offers to accept or purchases any primary or
18 subordinate mortgage loan in the regular course of business. A
19 person shall be deemed to be acting in the regular course of
20 business if he or she makes or accepts, or offers to make or
21 accept, more than five primary or subordinate mortgage loans
22 in any one calendar year.

23 (5) "Broker" means any person acting in the regular course
24 of business who, for a fee or commission or other consideration,
25 negotiates or arranges, or who offers to negotiate or arrange, a
26 primary or subordinate mortgage loan between a lender and a
27 borrower. A person shall be deemed to be acting in the regular
28 course of business if he or she negotiates or arranges, or offers
29 to negotiate or arrange, more than five primary or subordinate
30 mortgage loans in any one calendar year; or if he or she seeks
31 to charge a borrower or receive from a borrower money or other
32 valuable consideration in any primary or subordinate mortgage
33 transaction before completing performance of all broker
34 services that he or she has agreed to perform for the borrower.

35 (6) "Brokerage fee" means the fee or commission or other
36 consideration charged by a broker for the services described in
37 subdivision (5) of this section.

38 (7) "Additional charges" means every type of charge
39 arising out of the making or acceptance of a primary or subordi-
40 nate mortgage loan, except finance charges, including, but not
41 limited to, official fees and taxes, reasonable closing costs and

42 certain documentary charges and insurance premiums and other
43 charges which definition is to be read in conjunction with, and
44 permitted by section one hundred nine, article three, chapter
45 forty-six-a of this code.

46 (8) "Finance charge" means the sum of all interest and
47 similar charges payable directly or indirectly by the debtor
48 imposed or collected by the lender incident to the extension of
49 credit, as coextensive with the definition of "loan finance
50 charge" set forth in section one hundred two, article one,
51 chapter forty-six-a of this code.

52 (9) "Commissioner" means the commissioner of banking of
53 this state.

54 (10) "Applicant" means a person who has applied for a
55 lender's or broker's license.

56 (11) "Licensee" means any person duly licensed by the
57 commissioner under the provisions of this article as a lender or
58 broker.

59 (12) "Amount financed" means the total of the following
60 items to the extent that payment is deferred:

61 (a) The cash price of the goods, services or interest in land,
62 less the amount of any down payment, whether made in cash or
63 in property traded in;

64 (b) The amount actually paid or to be paid by the seller
65 pursuant to an agreement with the buyer to discharge a security
66 interest in or a lien on property traded in; and

67 (c) If not included in the cash price:

68 (i) Any applicable sales, use, privilege, excise or documen-
69 tary stamp taxes;

- 70 (ii) Amounts actually paid or to be paid by the seller for
71 registration, certificate of title or license fees; and
- 72 (iii) Additional charges permitted by this article.

§31-17-2. License required for lender or broker; exemptions.

1 (a) No person shall engage in this state in the business of
2 lender or broker unless and until he or she shall first obtain a
3 license to do so from the commissioner, which license remains
4 unexpired, unsuspended and unrevoked, and no foreign
5 corporation shall engage in such business in this state unless it
6 is registered with the secretary of state to transact business in
7 this state.

8 (b) The provisions of this article do not apply to loans made
9 by federally insured depository institutions, regulated consumer
10 lender licensees, insurance companies, or to loans made by any
11 other lender licensed by and under the supervision of any
12 agency of the federal government, or to loans made by, or on
13 behalf of, any agency or instrumentality of this state or federal
14 government or by a nonprofit community development organi-
15 zation which loans are subject to federal or state government
16 supervision and oversight. Loans made subject to this exemp-
17 tion may be assigned, transferred, sold or otherwise securitized
18 to any person and shall remain exempt from the provisions of
19 this article, except as to reporting requirements in the discretion
20 of the commissioner where the person is a licensee under this
21 article. Nothing herein shall prohibit a broker licensed under
22 this article from acting as broker of an exempt loan and
23 receiving compensation as permitted under the provisions of
24 this article.

25 (c) A person or entity designated in subsection (b) of this
26 section may take assignments of a primary or subordinate
27 mortgage loan from a licensed lender, and the assignments of
28 said loans that they themselves could have lawfully made as

29 exempt from the provisions of this article under this section do
30 not make that person or entity subject to the licensing, bonding,
31 reporting or other provisions of this article, except as such
32 defense or claim would be preserved pursuant to section one
33 hundred two, article two, chapter forty-six-a of this code.

34 (d) The placement or sale for securitization of a primary or
35 subordinate mortgage loan into a secondary market by a
36 licensee shall not subject the warehouser or final securitization
37 holder or trustee to the provisions of this article: *Provided*, That
38 the warehouser, final securitization holder or trustee under such
39 an arrangement is either a licensee, or person or entity entitled
40 to make exempt loans of that type under this section, or the loan
41 is held with right of recourse to a licensee.

**§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals.**

1 (a) Application for a lender's or broker's license shall each
2 year be submitted in writing under oath, in the form prescribed
3 by the commissioner, and shall contain the full name and
4 address of the applicant and, if the applicant is a partnership,
5 limited liability company or association, of every member
6 thereof, and, if a corporation, of each officer, director and
7 owner of ten percent or more of the capital stock thereof, and
8 such further information as the commissioner may reasonably
9 require. Any application shall also disclose the location at
10 which the business of lender or broker is to be conducted.

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

13 (1) If a foreign corporation, submit a certificate from the
14 secretary of state certifying that such applicant is registered
15 with the secretary of state to transact business in this state;

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

18 application net assets of at least two hundred fifty thousand
19 dollars;

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

25 (4) Pay to the commissioner a license fee of one thousand
26 two hundred fifty dollars. If the commissioner shall determine
27 that an investigation outside this state is required to ascertain
28 facts or information relative to the applicant or information set
29 forth in the application, the applicant may be required to
30 advance sufficient funds to pay the estimated cost of the
31 investigation. An itemized statement of the actual cost of the
32 investigation outside this state shall be furnished to the appli-
33 cant by the commissioner, and the applicant shall pay or shall
34 have returned to him or her, as the case may be, the difference
35 between his or her payment in advance of the estimated cost
36 and the actual cost of the investigation; and

37 (5) Submit proof that the applicant is a business in good
38 standing in its state of incorporation, or if not a corporation, its
39 state of business registration, and a full and complete disclosure
40 of any litigation or unresolved complaint filed by a governmen-
41 tal authority or class action lawsuit on behalf of consumers
42 relating to the operation of the license applicant.

43 (c) At the time of making application for a broker's license,
44 the applicant therefor shall:

45 (1) If a foreign corporation, submit a certificate from the
46 secretary of state certifying that the applicant is registered with
47 the secretary of state to transact business in this state;

48 (2) Submit proof that he or she has available for the
49 operation of the business at the location specified in the
50 application net worth of at least ten thousand dollars;

51 (3) File with the commissioner a bond in favor of the state
52 in the amount of twenty-five thousand dollars, in such form and
53 with such conditions as the commissioner may prescribe, and
54 executed by a surety company authorized to do business in this
55 state;

56 (4) Pay to the commissioner a license fee of one hundred
57 fifty dollars; and

58 (5) Submit proof that the applicant is a business in good
59 standing in its state of incorporation, or if not a corporation, its
60 state of business registration, and a full and complete disclosure
61 of any litigation or unresolved complaint filed by a governmen-
62 tal authority or class action lawsuit on behalf of consumers
63 relating to the operation of the license applicant.

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

67 (e) Nonresident lenders and brokers licensed under this
68 article by their acceptance of such license acknowledge that
69 they are subject to the jurisdiction of the courts of West
70 Virginia and the service of process pursuant to section one
71 hundred thirty-seven, article two, chapter forty-six-a of this
72 code and section thirty-three, article three, chapter fifty-six of
73 this code.

**§31-17-7. Form of license; posting required; license not transfer-
able or assignable; license may not be franchised;
renewal of license.**

1 (a) It shall be stated on the license whether it is a lender's
2 or broker's license, the location at which the business is to be
3 conducted and the full name of the licensee. A broker's license
4 shall be conspicuously posted in the licensee's place of business
5 in this state, and a lender's license shall be conspicuously

6 posted in the licensee's place of business if in this state. No
7 license shall be transferable or assignable. No licensee may
8 offer a franchise under that license to another person. The
9 commissioner may allow licensees to have branch offices
10 without requiring additional licenses provided the location of
11 all branch offices are registered with the division of banking by
12 the licensee. Whenever a licensee changes his place of business
13 to a location other than that set forth in his license and branch
14 registration, he shall give written notice thirty days prior to such
15 change to the commissioner.

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

24 (c) The amendments to this article in the year two thousand
25 are effective on and after the first day of July, two thousand.
26 Licenses previously issued and in effect on the first day of July,
27 two thousand, shall be extended for one year and, unless sooner
28 suspended or revoked, shall expire on the thirty-first day of
29 December, two thousand one. Any person, not already licensed,
30 who is operating as a broker or lender on the first day of July,
31 two thousand, and who is registered with the secretary of state
32 to do business in the state, may file an application with the
33 commissioner on or before the first day of August, two thou-
34 sand. If issued, such licenses shall, unless sooner suspended or
35 revoked, expire on the thirty-first day of December, two
36 thousand one.

**§31-17-8. Maximum interest rate on primary and subordinate
loans; prepayment rebate; maximum points, fees**

and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

1 (a) The maximum rate of finance charges on or in connec-
2 tion with any subordinate mortgage loan shall not exceed
3 eighteen percent per year on the unpaid balance of the amount
4 financed.

5 (b) A borrower shall have the right to prepay his or her debt
6 in whole or in part at any time and shall receive a rebate for any
7 unearned finance charge, exclusive of any points, investigation
8 fees and loan origination fees, which rebate shall be computed
9 under the actuarial method.

10 (c) Except as provided by section one hundred nine, article
11 three, chapter forty-six-a of this code, and by subsection (h) of
12 this section, no additional charges may be made, nor may any
13 charge permitted by this section be assessed unless the loan is
14 made;

15 (d) Where loan origination fees, investigation fees, points,
16 have been charged by the licensee, such charges may not be
17 imposed again by the same or affiliated lender in any refinanc-
18 ing of that loan or any additional loan on that property made
19 within twenty-four months thereof, unless these earlier charges
20 have been rebated by payment or credit to the consumer under
21 the actuarial method, or the total of the earlier and current
22 charges does not exceed the limitation specified in subsection
23 (n)(4) of this section. To the extent this subdivision overrides
24 the preemption on limiting points and other the charges on first
25 lien residential mortgage loans contained in the United States
26 Depository Institutions Deregulation and Monetary Control Act
27 of 1980, 12 U.S.C. §1735f-7a, the state law limitations con-
28 tained in this section shall apply. "Affiliated" means persons
29 under the same ownership or management control. As to

30 corporations, limited liability companies or partnerships, where
31 common owners manage or control a majority of the stock,
32 membership interests or general partnership interests of one or
33 more such corporations, limited liability companies or partner-
34 ships, those persons shall be deemed affiliated. In addition,
35 persons under the ownership or management control of the
36 members of an immediate family shall be considered affiliated.
37 For purposes of this section “immediate family” means mother,
38 step mother, father, step father, sister, step sister, brother, step
39 brother, spouse, child and grandchildren.

40 (e) Notwithstanding other provisions of this section, a
41 delinquent or “late charge” may be charged on any installment
42 made ten or more days after the regularly scheduled due date in
43 accordance with section one hundred twelve or one hundred
44 thirteen, article three, chapter forty-six-a of this code, which-
45 ever is applicable. The charge may be made only once on any
46 one installment during the term of the primary or subordinate
47 mortgage loan.

48 (f) Hazard insurance may be required by the lender, and
49 other types of insurance may be offered, as provided in section
50 one hundred nine, article three, chapter forty-six-a of this code.
51 The charges for any insurance shall not exceed the standard rate
52 approved by the insurance commissioner for such insurance.
53 Proof of all insurance in connection with primary and subordi-
54 nate mortgage loans subject to this article shall be furnished to
55 the borrower within thirty days from and after the date of
56 application therefor by said borrower.

57 (g) Except for fees for services provided by independent
58 third parties for appraisals, inspections, title searches and credit
59 reports, no application fee may be allowed whether or not
60 mortgage loan is consummated; however, the borrower may be
61 required to reimburse the lender for actual expenses incurred by
62 the lender in a purchase money transaction after acceptance and

63 approval of a mortgage loan proposal made in accordance with
64 the provisions of this article which is not consummated because
65 of:

66 (1) The borrower's willful failure to close said loan; or

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

69 (h) No licensee shall make, offer to make, accept or offer to
70 accept, any primary or subordinate mortgage loan except on the
71 terms and conditions authorized in this article.

72 (i) No licensee shall induce or permit any borrower to
73 become obligated to the licensee under this article, directly or
74 contingently, or both, under more than one subordinate mort-
75 gage loan at the same time for the purpose or with the result of
76 obtaining greater charges than would otherwise be permitted
77 under the provisions of this article.

78 (j) No instrument evidencing or securing a primary or
79 subordinate mortgage loan shall contain:

80 (1) Any power of attorney to confess judgment;

81 (2) Any provision whereby the borrower waives any rights
82 accruing to him or her under the provisions of this article;

83 (3) Any requirement that more than one installment be
84 payable in any one installment period, or that the amount of any
85 installment be greater or less than that of any other installment,
86 except for the final installment which may be in a lesser
87 amount, or unless the loan is structured as a revolving line of
88 credit having no set final payment date;

89 (4) Any assignment of or order for the payment of any
90 salary, wages, commissions or other compensation for services,
91 or any part thereof, earned or to be earned;

92 (5) A requirement for compulsory arbitration which does
93 not comply with federal law; or,

94 (6) Blank or blanks to be filled in after the consummation
95 of the loan.

96 (k) No licensee shall charge a borrower or receive from a
97 borrower money or other valuable consideration as compensa-
98 tion before completing performance of all services the licensee
99 has agreed to perform for the borrower, unless the licensee also
100 registers and complies with all requirements set forth for credit
101 service organizations in article six-c, chapter forty-six-a of this
102 code, including all additional bonding requirements as may be
103 established therein.

104 (l) No licensee shall make or broker revolving loans
105 secured by a primary or subordinate mortgage lien for the retail
106 purchase of consumer goods and services by use of a lender
107 credit card.

108 (m) In making any primary or subordinate mortgage loan,
109 no licensee may, and no primary or subordinate mortgage
110 lending transaction may contain terms which:

111 (1) Collect a fee not disclosed to the borrower; collect any
112 attorney fee at closing in excess of the fee that has been or will
113 be remitted to the attorney; collect a fee for a product or service
114 where the product or service is not actually provided; misrep-
115 sent the amount charged by or paid to a third party for a product
116 or service; collect duplicate fee or points to act as both broker
117 and lender for the same mortgage loan, however, fees and
118 points may be divided between the broker and the lender as they
119 agree, but may not exceed the total charges otherwise permitted
120 under this article; *Provided*, That the fact of any fee, point or
121 compensation is disclosed to the borrower consistent with the
122 solicitation representation made to the borrower.

123 (2) Compensate, whether directly or indirectly, coerce or
124 intimidate an appraiser for the purpose of influencing the
125 independent judgment of the appraiser with respect to the value
126 of real estate that is to be covered by a deed of trust or is being
127 offered as security according to an application for a primary or
128 subordinate mortgage loan;

129 (3) Make or assist in making any primary or subordinate
130 mortgage loan with the intent that the loan will not be repaid
131 and that the lender will obtain title to the property through
132 foreclosure: *Provided*, That this subdivision shall not apply to
133 reverse mortgages obtained under the provisions of article
134 twenty-four, chapter forty-seven of this code;

135 (4) Require the borrower to pay, in addition to any periodic
136 interest, combined fees and points of any kind to the lender and
137 broker to arrange, originate, evaluate, maintain or service a loan
138 secured by any encumbrance on residential property that
139 exceed, in the aggregate, five percent of the loan amount
140 financed: *Provided*, That reasonable closing costs payable to
141 unrelated third parties as permitted under section one hundred
142 nine, article three, chapter forty-six-a of this code shall not be
143 included within this limitation: *Provided, however*, That yield
144 spread premiums or compensation of two points or less paid by
145 the lender to the broker shall not be included in this limitation:
146 *Provided further*, That no yield spread premium shall be
147 permitted for any loan for which the annual percentage rate
148 exceeds eighteen percent per year on the unpaid balance of the
149 amount financed. The financing of the fees and points shall be
150 permissible and, where included as part of the finance charge,
151 does not constitute charging interest on interest. To the extent
152 that this section overrides the preemption on limiting points and
153 other charges on first lien residential mortgage loans contained
154 in the United States Depository Institutions Deregulation and
155 Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state
156 law limitations contained in this section shall apply;

157 (5) Secure a primary or subordinate mortgage loan by any
158 security interest in personal property unless the personal
159 property is affixed to the residential dwelling or real estate;

160 (6) Allow or require a primary or subordinate mortgage
161 loan to be accelerated because of a decrease in the market value
162 of the residential dwelling that is securing the loan;

163 (7) Require terms of repayment which do not result in
164 continuous monthly reduction of the original principal amount
165 of the loan: *Provided*, That the provisions of this subdivision
166 shall not apply to reverse mortgage loans obtained under article
167 twenty-four, chapter forty-seven of this code, home equity,
168 open-end lines of credit, bridge loans used in connection with
169 the purchase or construction of another residential dwelling, or
170 commercial loans for multiple residential purchases;

171 (8) Secure a primary or subordinate mortgage loan in a
172 principal amount, that when added to the aggregate total of the
173 outstanding principal balances of all other primary or subordi-
174 nate mortgage loans secured by the same property, exceeds the
175 fair market value of the property on the date that the latest
176 mortgage loan is made. For purposes of this paragraph, a broker
177 or lender may rely upon a bona fide written appraisal of the
178 property made by an independent third-party appraiser, or other
179 evidence of fair market value, if the broker or lender does not
180 have actual knowledge that the value is incorrect;

181 (9) Advise or recommend that the consumer not make
182 timely payments on an existing loan preceding loan closure of
183 a refinancing transaction; or

184 (10) Knowingly violate any provision of any other applica-
185 ble state or federal law regulating primary or subordinate
186 mortgage loans, including, without limitation, chapter forty-six-
187 a of this code.

§31-17-9. Disclosure; closing statements; other records required.

1 (a) Any licensee or person making on his own behalf, or as
2 agent, broker or in other representative capacity on behalf of
3 any other person, a primary or subordinate mortgage loan shall
4 at the time of the closing furnish to the borrower a complete and
5 itemized closing statement which shall show in detail:

6 (1) The amount and date of the note or primary and
7 subordinate mortgage loan contract and the date of maturity;

8 (2) The nature of the security;

9 (3) The finance charge rate per annum and the itemized
10 amount of finance charges and additional charges;

11 (4) The amount financed and total of payments;

12 (5) Disposition of the principal;

13 (6) A description of the payment schedule;

14 (7) The terms on which additional advances, if any, will be
15 made;

16 (8) The charge to be imposed for past-due installments;

17 (9) A description and the cost of insurance required by the
18 lender or purchased by the borrower in connection with the
19 primary or subordinate mortgage loan;

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

22 (11) That the borrower may prepay the primary or subordi-
23 nate mortgage loan in whole or in part on any installment date,
24 and that the borrower will receive a rebate in full for any
25 unearned finance charge.

26 Such detailed closing statement shall be signed by the
27 broker, lender or closing representative, and a completed and
28 signed copy thereof shall be retained by the broker or lender
29 and made available at all reasonable times to the borrower, the
30 borrower's successor in interest to the residential property, or
31 the authorized agent of the borrower or the borrower's succe-
32 sor, until the time as the indebtedness shall be satisfied in full.
33 Compliance with residential mortgage disclosures required by
34 federal law shall be deemed to meet the requirements of this
35 subsection.

36 The commissioner may, from time to time, by rules
37 prescribe additional information to be included in a closing
38 statement.

39 (b) Upon written request from the borrower, the holder of
40 a primary or subordinate mortgage loan instrument shall deliver
41 to the borrower, within ten business days from and after receipt
42 of the written request, a statement of the borrower's account as
43 required by subsection two, section one hundred fourteen,
44 article two, chapter forty-six-a of this code.

45 (c) Upon satisfaction of a primary or subordinate mortgage
46 loan obligation in full, the holder of the instrument evidencing
47 or securing the obligation shall comply with the requirements
48 of section one, article twelve, chapter thirty-eight of this code
49 in the prompt release of the lien which had secured the primary
50 or subordinate mortgage loan obligation.

51 (d) Upon written request or authorization from the bor-
52 rower, the holder of a primary or subordinate mortgage loan
53 instrument shall send or otherwise provide to the borrower or
54 his or her designee, within three business days after receipt of
55 the written request or authorization, a payoff statement of the
56 borrower's account. Except as provided by this subsection, no
57 charge may be made for providing the payoff statement.
58 Charges for the actual expenses associated with using a third-

59 party courier delivery or expedited mail delivery service may be
60 assessed when this type of delivery is requested and authorized
61 by the borrower, following disclosure to the borrower of its
62 cost. The payoff information shall be provided by mail,
63 telephone, courier, facsimile, or other transmission as requested
64 by the borrower or his or her designee.

§31-17-10. Advertising requirements.

1 It shall be unlawful and an unfair trade practice for any
2 person to cause to be placed before the public in this state,
3 directly or indirectly, any false, misleading or deceptive
4 advertising matter pertaining to primary or subordinate mort-
5 gage loans or the availability thereof: *Provided*, That this
6 section shall not apply to the owner, publisher, operator or
7 employees of any publication or radio or television station
8 which disseminates such advertising matter without actual
9 knowledge of the false or misleading character thereof.

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

1 (a) Every licensee shall maintain at his or her place of
2 business in this state, if any, or if he or she has no place of
3 business in this state at his or her principal place of business
4 outside this state, such books, accounts and records relating to
5 all transactions within this article as are necessary to enable the
6 commissioner to enforce the provisions of this article. All the
7 books, accounts and records shall be preserved, exhibited to the
8 commissioner and kept available as provided herein for the
9 reasonable period of time as the commissioner may by rules
10 require. The commissioner is hereby authorized to prescribe by
11 rules the minimum information to be shown in the books,
12 accounts and records.

13 (b) Each licensee shall file with the commissioner on or
14 before the fifteenth day of March of each year a report under
15 oath or affirmation concerning his or her business and opera-

16 tions in this state for the preceding license year in the form
17 prescribed by the commissioner.

18 (c) The commissioner may, at his or her discretion, make or
19 cause to be made an examination of the books, accounts and
20 records of every licensee pertaining to primary and subordinate
21 mortgage loans made in this state under the provisions of this
22 article, for the purpose of determining whether each licensee is
23 complying with the provisions hereof and for the purpose of
24 verifying each licensee's annual report. If the examination is
25 made outside this state, the licensee shall pay the cost thereof
26 in like manner as applicants are required to pay the cost of
27 investigations outside this state.

28 (d) The commissioner shall publish annually an aggregate
29 analysis of the information furnished in accordance with the
30 provisions of subsection (b) or (c) of this section, but the
31 individual reports shall not be public records and shall not be
32 open to public inspection.

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

1 (a) The commissioner may suspend or revoke any license
2 issued hereunder if he or she finds that the licensee and/or any
3 owner, director, officer, member, partner, stockholder, em-
4 ployee or agent of such licensee:

5 (1) Has knowingly violated any provision of this article or
6 any order, decision or rule of the commissioner lawfully made
7 pursuant to the authority of this article; or

8 (2) Has knowingly made any material misstatement in the
9 application for such license; or

10 (3) Does not have available the net worth required by the
11 provisions of section four of this article; or

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

14 (5) In the case of a foreign corporation, does not remain
15 qualified to do business in this state; or

16 (6) Has committed any fraud or engaged in any dishonest
17 activities with respect to any mortgage loan business in this
18 state, or failed to disclose any of the material particulars of any
19 mortgage loan transaction in this state to anyone entitled to the
20 information; or

21 (7) Has otherwise demonstrated bad faith, dishonesty or any
22 other quality indicating that the business of the licensee in this
23 state has not been or will not be conducted honestly or fairly
24 within the purpose of this article. It shall be a demonstration of
25 bad faith and an unfair or deceptive act or practice to engage in
26 a pattern of making loans where the consumer has insufficient
27 sources of income to timely repay the debt, and the lender had
28 the primary intent to acquire the property upon default rather
29 than to derive profit from the loan. This section shall not limit
30 any right the consumer may have to bring an action for a
31 violation of section one hundred four, article six, chapter forty-
32 six-a of this code in an individual case.

33 The commissioner may also suspend or revoke the license
34 of a licensee if he or she finds the existence of any ground upon
35 which the license could have been refused, or any ground which
36 would be cause for refusing a license to such licensee were he
37 then applying for the same. The commissioner may also
38 suspend or revoke the license of a licensee pursuant to his or
39 her authority under section thirteen, article two, chapter thirty-
40 one-a of this code.

41 (b) The suspension or revocation of the license of any
42 licensee shall not impair or affect the obligation of any preexist-
43 ing lawful mortgage loan between such licensee and any
44 obligor.

45 (c) The commissioner may reinstate a suspended license, or
46 issue a new license to a licensee whose license has been
47 revoked, if the grounds upon which any such license was
48 suspended or revoked have been eliminated or corrected and the
49 commissioner is satisfied that the grounds are not likely to
50 recur.

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

1 (a) Any applicant or licensee, as the case may be, adversely
2 affected by an order made and entered by the commissioner in
3 accordance with the provisions of section thirteen of this article,
4 if not previously provided the opportunity to a hearing on the
5 matter, may in writing demand a hearing before the commis-
6 sioner. The commissioner may appoint a hearing examiner to
7 conduct the hearing and prepare a recommended decision. The
8 written demand for a hearing must be filed with the commis-
9 sioner within thirty days after the date upon which the applicant
10 or licensee was served with a copy of such order. The timely
11 filing of a written demand for hearing shall stay or suspend
12 execution of the order in question, pending a final determina-
13 tion, except for an order suspending a license for failure of the
14 licensee to maintain the bond required by section four of this
15 article in full force and effect. If a written demand is timely
16 filed as aforesaid, the aggrieved party shall be entitled to a
17 hearing as a matter of right.

18 (b) All of the pertinent provisions of article five, chapter
19 twenty-nine-a of this code shall apply to and govern the hearing
20 and the administrative procedures in connection with and
21 following such hearing, with like effect as if the provisions of
22 said article were set forth in extenso in this subsection.

23 (c) For the purpose of conducting any such hearing hereun-
24 der, the commissioner or appointed hearing examiner shall have
25 the power and authority to issue subpoenas and subpoenas

26 duces tecum, in accordance with the provisions of section one,
27 article five, chapter twenty-nine-a of this code. All subpoenas
28 and subpoenas duces tecum shall be issued and served in the
29 manner, within the time and for the fees and shall be enforced,
30 as specified in said section, and all of the said section provi-
31 sions dealing with subpoenas and subpoenas duces tecum shall
32 apply to subpoenas and subpoenas duces tecum issued for the
33 purpose of a hearing hereunder.

34 (d) Any such hearing shall be held within twenty days after
35 the date upon which the commissioner received the timely
36 written demand therefor, unless there is a postponement or
37 continuance. The commissioner or hearing examiner may
38 postpone or continue any hearing on his or her own motion, or
39 for good cause shown upon the application of the aggrieved
40 party. At any such hearing, the aggrieved party may represent
41 himself or herself or be represented by any attorney-at-law
42 admitted to practice before any circuit court of this state.

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

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

1 (a) If any primary or subordinate mortgage loan is made in
2 willful violation of the provisions of this article, except as a
3 result of a bona fide error, such loan may be cancelled by a
4 court of competent jurisdiction.

5 (b) Any agreement whereby the borrower waives the
6 benefits of this article shall be deemed to be against public
7 policy and void.

8 (c) Any residential mortgage loan transaction in violation
9 of this article shall be subject to an action, which may be
10 brought in a circuit court having jurisdiction, by the borrower
11 seeking damages, reasonable attorneys fees and costs.

12 (d) A licensee who, when acting in good faith in a lending
13 transaction, inadvertently and without intention, violates any
14 provision of this article or fails to comply with any provision of
15 this article, will be excused from such violation if within thirty
16 days of becoming aware of such violation, or being notified of
17 such violation, and prior to the institution of any civil action or
18 criminal proceeding against the licensee, the licensee notifies
19 the borrower of the violation, makes full restitution of any
20 overcharges, and makes all other adjustments as are necessary
21 to make the lending transaction comply with this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

1 (a) This chapter does not apply to:

2 (1) Extensions of credit to government or governmental
3 agencies or instrumentalities;

4 (2) The sale of insurance by an insurer, except as otherwise
5 provided in this chapter;

6 (3) Transactions under public utility or common carrier
7 tariffs if a subdivision or agency of this state or of the United
8 States regulates the charges for the services involved, the
9 charges for delayed payment, and any discount allowed for
10 early payment; or

11 (4) Licensed pawnbrokers.

12 (b) Mortgage lender and broker licensees are excluded from
13 the provisions of this chapter to the extent those provisions
14 directly conflict with any section of article seventeen, chapter
15 thirty-one of this code.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-102. License to make regulated consumer loans.

1 (1) The commissioner shall receive and act on all applica-
2 tions for licenses to make regulated consumer loans under this
3 chapter. Applications shall be under oath, be filed in the manner
4 prescribed by the commissioner, and contain the information
5 the commissioner requires to make an evaluation of the
6 financial responsibility, experience, character and fitness of the
7 applicant, and the findings required of him before he may issue
8 a license. At the time of the filing of the application, the sum of
9 seven hundred fifty dollars shall be paid to the commissioner as
10 an investigation fee.

11 (2) No license shall be issued to a supervised financial
12 organization other than to one primarily engaged in the business
13 of making consumer loans through offices located within this
14 state, or to one licensed under the provisions of the West
15 Virginia mortgage loan act as contained in article seventeen,
16 chapter thirty-one of this code, or to any banking institution as
17 defined by the provisions of section two, article one, chapter
18 thirty-one-a of this code. No license will be granted to any
19 office located outside this state: *Provided*, That the limitation

20 of licensing contained in this subsection shall not prevent any
21 supervised financial organization from making regulated
22 consumer loans when the applicable state or federal statute,
23 law, rule or regulation permits. No license shall be issued to any
24 person unless the commissioner, upon investigation, finds that
25 the financial responsibility, experience, character and fitness of
26 the applicant, and of the members thereof (if the applicant is a
27 copartnership or association) and of the officers and directors
28 thereof (if the applicant is a corporation), are such as to
29 command the confidence of the community and to warrant
30 belief that the business will be operated honestly, fairly and
31 efficiently, within the purposes of this chapter, and the appli-
32 cant has available for the operation of the business at least ten
33 thousand dollars in capital and has, for each specified location
34 of operation assets of at least two thousand dollars.

35 (3) Upon written request, the applicant is entitled to a
36 hearing on the question of his qualifications for a license if: (a)
37 The commissioner has notified the applicant in writing that his
38 application has been denied; or (b) the commissioner has not
39 issued a license within sixty days after the application for the
40 license was filed. A request for a hearing may not be made
41 more than fifteen days after the commissioner has mailed a
42 writing to the applicant notifying him that the application has
43 been denied and stating in substance the commissioner's
44 findings supporting denial of the application.

45 (4) Not more than one place of business shall be maintained
46 under the same license, but the commissioner may issue more
47 than one license to the same licensee upon compliance with all
48 the provisions of this article governing an original issuance of
49 a license, for each such new license. Each license shall remain
50 in full force and effect until surrendered, forfeited, suspended
51 or revoked.

52 (5) Upon giving the commissioner at least fifteen days'
53 prior written notice, a licensee may: (a) Change the location of

54 any place of business located within a municipality to any other
55 location within that same municipality; or (b) change the
56 location of any place of business located outside of a municipal-
57 ity to a location no more than five miles from the originally
58 licensed location, but in no case may a licensee move any place
59 of business located outside a municipality to a location within
60 a municipality. A licensee may not move the location of any
61 place of business located within a municipality to any other
62 location outside of that municipality.

63 (6) A licensee may conduct the business of making regu-
64 lated consumer loans only at or from a place of business for
65 which he holds a license and not under any other name than that
66 stated in the license.

67 (7) A license issued under the provisions of this section
68 shall not be transferable or assignable.

69 (8) A licensee must be incorporated under the laws of this
70 state. The licensee may, however, be a subsidiary of an out-of-
71 state company or financial institution.

**§46A-4-109. Restrictions on interest in land as security; assign-
ment of earnings to regulated consumer lender
prohibited; when security interest on household
furniture goods not valid; prohibitions as to
renegotiation of loan discharged in bankruptcy;
limiting fees on real property loan refinancings;
maximum points, fees and charges; overriding of
federal limitations; limitations on lien documents
prohibitions on residential mortgage loans; pro-
viding civil remedy.**

1 (1) No consumer loan of two thousand dollars or less may
2 be secured by an interest in land, other than a purchase money
3 loan for that land, unless the lender is licensed in this state as a
4 regulated consumer lender or as a mortgage lender, or is a

5 federally insured depository institution permitted to conduct
6 lending in West Virginia. A security interest taken in violation
7 of this subsection is void.

8 (2) Notwithstanding the provisions of section one hundred
9 sixteen, article two of this chapter, no regulated consumer
10 lender shall take any assignment of or order for payment of any
11 earnings to secure any loan made by any regulated consumer
12 lender under this article. An assignment or order taken in
13 violation of this subsection is void. This subsection does not
14 prohibit a court from ordering a garnishment to affect recovery
15 of moneys owed by a borrower to a lender as part of a judgment
16 in favor of said lender.

17 (3) Other than for a purchase money lien, no regulated
18 consumer lender may take a security interest in household
19 goods in the possession and use of the borrower. Where federal
20 law permits a security interest in certain nonpurchase items
21 deemed not to be household goods, the security agreement
22 creating such security interest must be in writing, signed in
23 person by the borrower, and if the borrower is married, signed
24 in person by both husband and wife: *Provided*, That the
25 signature of both husband and wife shall not be required when
26 they have been living separate and apart for a period of at least
27 five months prior to the making of such security agreement. A
28 security interest taken in violation of this subsection is void.

29 (4) A regulated consumer lender may not renegotiate the
30 original loan, or any part thereof, or make a new contract
31 covering the original loan, or any part thereof, with any
32 borrower, who has received a discharge in bankruptcy of the
33 original loan or any balance due thereon at the time of said
34 discharge from any court of the United States of America
35 exercising jurisdiction in insolvency and bankruptcy matters,
36 unless said regulated consumer lender shall pay to and deliver
37 to the borrower the full amount of the loan shown on said note,

38 promise to pay, or security, less any deductions for charges
39 herein specifically authorized.

40 (5) In making any loan secured by any encumbrance on
41 residential property, no lender may, and no such lending
42 transaction may contain terms which:

43 (A) Collect a fee not disclosed to the borrower; collect any
44 attorney fee at closing in excess of the fee that has been or will
45 be remitted to the attorney; collect a duplicate fee or points to
46 act as both broker and lender for the same mortgage loan;
47 collect a fee for a product or service where the product or
48 service is not actually provided; or, misrepresent the amount
49 charged by or paid to a third party for a product or service;

50 (B) Compensate, whether directly or indirectly, coerce or
51 intimidate an appraiser for the purpose of influencing the
52 independent judgment of the appraiser with respect to the value
53 of the real estate that is to be encumbered;

54 (C) Make or assist in making any loan secured by any
55 encumbrance on residential property with the intent that the
56 loan will not be repaid and that the lender will obtain title to the
57 property through foreclosure: *Provided*, That this subdivision
58 shall not apply to reverse mortgages obtained under the
59 provisions of article twenty-four, chapter forty-seven of this
60 code;

61 (D) Allow or require a loan secured by any encumbrance on
62 residential property to be accelerated because of a decrease in
63 the market value of the residential dwelling that is securing the
64 loan;

65 (E) Require or contain terms of repayment which do not
66 result in continuous monthly reduction of the original principal
67 amount of the loan: *Provided*, That the provisions of this
68 subdivision shall not apply to reverse mortgage loans obtained

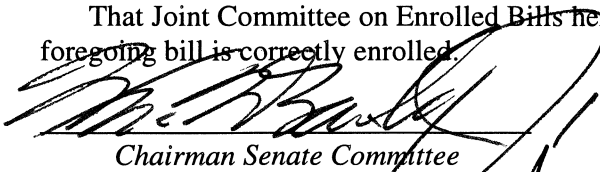
69 under article twenty-four, chapter forty-seven of this code,
70 home equity, open-end lines of credit, bridge loans used in
71 connection with the purchase or construction of another
72 residential dwelling, or commercial loans for multiple residen-
73 tial purchases;

74 (F) Secure a residential mortgage loan in a principal
75 amount, that when added to the aggregate total of the outstand-
76 ing principal balances of all other residential mortgage loans
77 secured by the same property, exceeds the fair market value of
78 the property on the date that the latest residential mortgage loan
79 is made. For purposes of this paragraph, a lender may rely upon
80 a bona fide written appraisal of the property made by an
81 independent third-party appraiser, or other evidence of fair
82 market value, if the lender does not have actual knowledge that
83 the value is incorrect; or

84 (G) (1) Require compulsory arbitration which does not
85 comply with federal law; (2) Contain a document with blank or
86 blanks to be filled in after the consummation of the loan; (3)
87 Contain a power of attorney to confess judgment; (4) Contain
88 any provision whereby the borrower waives any rights accruing
89 to him or her under the provisions of this article; (5) Contain
90 any requirement that more than one installment be payable in
91 any one installment period; or, (6) Contain any assignment of or
92 order for the payment of any salary, wages, commissions or
93 other compensation for services, or any part thereof, earned or
94 to be earned; or

95 (H) Advise or recommend that the consumer not make
96 timely payments on an existing loan preceding loan closure of
97 a refinancing transaction.

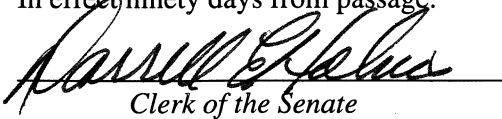
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

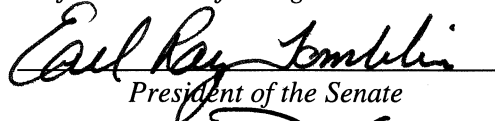

Chairman House Committee

Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 24th
day of March, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/00

Time 12:40 pm