WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2002

---COMMITTEE SUBSTITUTE FOR---

House Bill No. 4379

(By Delegate R. M. Thompson)

Passed March 7, 2002

In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4379

(BY DELEGATE R. M. THOMPSON)

[Passed March 7, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, four, five, six, seven, eight, eleven and twelve, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of mortgage brokers, lenders, servicers and loan originators; defining terms; requiring licensure of loan originators; increasing the bond amount required for mortgage brokers; creating licensing structure for loan originators; clarifying that only lender and broker licensees pay the per loan fee; providing for the refusal, revocation and suspension of loan originator licenses; providing for renewal of loan originator’s license every five years or upon a change in the sponsoring mortgage broker; amending the continuing legal education requirements for brokers and loan originators; requiring a net tangible benefit to the borrower for all refinancings of mortgage loans within twenty-four months, and clarifying language relating to allowable charges by licensees.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

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

As used in this article:

(1) "Primary mortgage loan" means a consumer loan made to an individual which is secured, in whole or in part, by a primary mortgage or deed of trust upon any interest in real property used as an owner-occupied residential dwelling with accommodations for not more than four families;

(2) "Subordinate mortgage loan" means a consumer loan made to an individual which is secured, in whole or in part, by a mortgage or deed of trust upon any interest in real property used as an owner-occupied residential dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages or deeds of trust;

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

(4) "Lender" means any person who makes or offers to make or accepts or offers to accept or purchases or services any primary or subordinate mortgage loan in the regular course of business. A person is considered to be acting in the regular course of business if he or she makes or accepts, or offers to
make or accept, more than five primary or subordinate mortgage loans in any one calendar year;

(5) "Broker" means any person acting in the regular course of business who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, or originates, processes or assigns a primary or subordinate mortgage loan between a lender and a borrower. A person is considered to be acting in the regular course of business if he or she negotiates or arranges, or offers to negotiate or arrange, or originates, processes or assigns any primary or subordinate mortgage loans in any one calendar year; or if he or she seeks to charge a borrower or receive from a borrower money or other valuable consideration in any primary or subordinate mortgage transaction before completing performance of all broker services that he or she has agreed to perform for the borrower;

(6) "Brokerage fee" means the fee or commission or other consideration charged by a broker or loan originator for the services described in subdivision (5) of this section;

(7) "Additional charges" means every type of charge arising out of the making or acceptance of a primary or subordinate mortgage loan, except finance charges, including, but not limited to, official fees and taxes, reasonable closing costs and certain documentary charges and insurance premiums and other charges which definition is to be read in conjunction with and permitted by section one hundred nine, article three, chapter forty-six-a of this code;

(8) "Finance charge" means the sum of all interest and similar charges payable directly or indirectly by the debtor imposed or collected by the lender incident to the extension of credit as coextensive with the definition of "loan finance charge" set forth in section one hundred two, article one, chapter forty-six-a of this code;
(9) “Commissioner” means the commissioner of banking of this state;

(10) “Applicant” means a person who has applied for a lender’s, broker’s or loan originator’s license;

(11) “Licensee” means any person duly licensed by the commissioner under the provisions of this article as a lender, broker or loan originator;

(12) “Amount financed” means the total of the following items to the extent that payment is deferred:

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

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

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this article;

(13) “Affiliated” means persons under the same ownership or management control. As to corporations, limited liability companies or partnerships, where common owners manage or control a majority of the stock, membership interests or general partnership interests of one or more such corporations, limited liability companies or partnerships, those persons are consid-
ered affiliated. In addition, persons under the ownership or management control of the members of an immediate family shall be considered affiliated. For purposes of this section, “immediate family” means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and grandchildren;

(14) “Servicing” or “servicing a residential mortgage loan” means through any medium or mode of communication the collection or remittance for, or the right or obligation to collect or remit for another lender, note owner or noteholder, payments of principal, interest, including sales finance charges in a consumer credit sale, and escrow items as insurance and taxes for property subject to a residential mortgage loan; and

(15) “Loan originator” means an individual who, on behalf of a single licensed mortgage broker, under the direct supervision and control of such mortgage broker, and in exchange for compensation by that broker, performs any of the services described in subsection (5) of this section.

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

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

(b) The provisions of this article do not apply to loans made by the following:

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;

(4) Any other lender licensed by and under the regular supervision and examination for consumer compliance of any agency of the federal government;

(5) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;

(6) By a nonprofit community development organization making mortgage loans to promote home ownership or improvements for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or

(7) Habitat for humanity international, inc. and its affiliates providing low-income housing within this state.

Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

(c) A person or entity designated in subsection (b) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the
defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

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

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

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

Application for a loan originator’s license shall be initially submitted prior to the first day of September, two thousand two, and thereafter in every fifth year beginning in two thousand five. If the loan originator changes sponsoring mortgage brokers, a new application must be submitted in accordance with this article.

(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 the applicant is registered with the secretary of state to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least two hundred fifty thousand dollars;

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

(4) Pay to the commissioner a license fee of one thousand two hundred fifty dollars plus the actual cost of fingerprint processing. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the 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 or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.
(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 the applicant is registered with the secretary of state to transact business in this state;

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

(3) File with the commissioner a bond in favor of the state for the benefit of consumers in the amount of fifty thousand dollars, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state: Provided, That the bond must be in the amount of one hundred thousand dollars before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of three hundred fifty dollars plus the actual cost of fingerprint processing; and

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

(d) Application for a loan originator license shall be submitted by the sponsoring mortgage broker prior to the loan originator engaging in mortgage activity, in writing under oath, on a form prescribed by the commissioner. At the time of making application for a loan originator license, the loan originator therefor shall:
(1) Submit a statement under oath that he or she originates loans exclusively for one broker, together with an acknowledgment of employment by the sponsoring mortgage broker;

(2) Pay to the commissioner a license fee of one hundred fifty dollars plus the actual cost of fingerprint processing;

(3) Disclose the location at which the business of the sponsoring mortgage broker is to be conducted by the licensed loan originator; and

(4) If at any time a loan originator ceases working for the sponsoring mortgage broker indicated on the license application, such loan originator and sponsoring mortgage broker shall notify the commissioner within fifteen business days and return the original loan originator license to the division of banking. The license of a loan originator is not effective during any period when that person is not employed by a sponsoring mortgage broker licensed under this article, and a loan originator shall not be employed simultaneously by more than one sponsoring mortgage broker.

(e) 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 the bond.

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

(g) The commissioner may elect to reduce or waive the application fees, bond amounts and net worth requirements imposed by this section for nonprofit corporations whose residential mortgage lending or brokering activities provide
housing primarily to households or persons below the HUD-established median income for their area of residence.

(h) Every broker and lender licensee shall pay a fee of five dollars for each residential mortgage loan originated, made or brokered in a calendar year. This fee shall be paid semiannually to the division of banking and remitted with the report required pursuant to subsection (b), section eleven of this article for loans made, brokered or originated during the last six months of the previous calendar year and with the lender or broker license renewal application required pursuant to subsection (b), section seven of this article for the loans made, brokered or originated in the first six months of that calendar year. In the event a licensee ceases operation, it shall remit any fees due since the last reporting period when it relinquishes its license.

§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 the applicant and his or her application for a lender’s, broker’s or loan originator’s license, as the case may be. Upon the basis of the application and all other information before him or her, 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 worth required by the provisions of section four of this article, if applicable;

(2) The financial responsibility, character, reputation, experience or general fitness of the applicant, including its officers, directors, principals and employees, reasonably warrants the belief that the business will not be operated
16 lawfully and properly in accordance with the provisions of this
17 article;

18 (3) 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 out-
standing.

22 Otherwise, the commissioner shall issue to the applicant a
lender’s, broker’s or loan originator’s license which shall entitle
the applicant to engage in the business of lender, broker or loan
originator, as the case may be, during the period, unless sooner
suspended or revoked, for which the license is issued.

27 (b) Every application for a lender’s, broker’s or loan
originator’s license shall be passed upon and the license issued
or refused within ninety days after the applicant therefor has
fully complied with the provisions of section four of this article.
Under no circumstances whatever shall a person or licensee act
as a broker and lender in the same transaction. Whenever an
application for a lender’s, broker’s or loan originator’s license
is denied and the license sought is refused, which refusal has
become final, the commissioner shall retain all fees to cover
administrative costs of processing the broker, lender or loan
originator application.

§31-17-6. Minimum net worth to be maintained; bond to be kept
in full force and effect; foreign corporation to
remain qualified to do business in this state.

1 At all times, a lender and broker licensee shall: (1) Have
2 available the net worth required by the provisions of section
3 four of this article; (2) keep the bond required by said section
4 in full force and effect; and (3) if the licensee be a foreign
5 corporation, remain qualified to transact business in this state
6 unless otherwise exempt.
§31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; renewal of license.

(a) It shall be stated on the license, whether it is a lender’s, broker’s or loan originator’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. No licensee may offer a franchise under that license to another person. The commissioner may allow licensees to have branch offices without requiring additional licenses provided the location of all branch offices is registered with the division of banking by the licensee. Whenever a licensee changes his or her place of business to a location other than that set forth in his or her license and branch registration, he or she shall give written notice thirty days prior to such change to the commissioner.

(b) Every lender’s or broker’s license shall, unless sooner suspended or revoked, expire on the thirty-first day of December of each year and any license may be renewed each year in the same manner, for the same license 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. Every loan originator’s license shall, unless sooner suspended or revoked, expire on the thirtieth day of June of every fifth year beginning in two thousand five, and any license may be renewed in the same manner, for the same license fee specified above and in accordance with section five of this article. All applications for the renewal of licenses shall be filed with the commissioner at least ninety days before the expiration thereof.

(c) Beginning with renewal applications in the year two thousand two, a broker’s license may not be renewed unless that
licensee’s executive officer certifies to the commissioner on the renewal application that every loan originator employed by that licensed broker has received at least seven hours of continuing education in the prior year. Both the course of instruction and the entity providing such continuing education must receive prior approval from the commissioner as satisfying the continuing education requirement established herein before the commissioner may accept a certification from a licensee. The commissioner shall make available a list of entities and courses that have been approved for continuing education hours.

§31-17-8. Maximum interest rate on 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.

(a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan may not exceed eighteen percent per year on the unpaid balance of the amount financed.

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

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

(d) Where loan origination fees, investigation fees or points have been charged by the licensee, the charges may not be
imposed again in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower’s circumstances. The licensee shall document this benefit in writing on a form prescribed by the commissioner and maintain such documentation in the loan file.

To the extent this subdivision overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations contained in this section shall apply.

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

(f) Hazard insurance may be required by the lender. The charges for any insurance shall not exceed the standard rate approved by the insurance commissioner for the insurance. Proof of all insurance in connection with primary and subordinate mortgage loans subject to this article shall be furnished to the borrower within thirty days from and after the date of application therefor by the borrower.

(g) Except for fees for services provided by unrelated third parties for appraisals, inspections, title searches and credit reports, no application fee may be allowed whether or not the mortgage loan is consummated; however, the borrower may be
required to reimburse the licensee for actual expenses incurred
by the licensee in a purchase money transaction after accep-
tance and approval of a mortgage loan proposal made in
accordance with the provisions of this article which is not
consummated because of:

(1) The borrower’s willful failure to close the loan; or

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

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

(i) No licensee shall induce or permit any borrower to
become obligated to the licensee under this article, directly or
contingently, or both, under more than one subordinate mort-
gage 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.

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

(1) Any power of attorney to confess judgment;

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

(3) 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 unless the loan is structured as a revolving line of
credit having no set final payment date;
17 [Enr. Com. Sub. for H. B. 4379]

(4) 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;

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

(6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be given a copy of every signed document executed by the borrower at the time of closing.

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

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

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

(1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a fee for a product or service where the product or service is not actually provided; misrepresent the amount charged by or paid to a third party for a product or service; or collect duplicate fee or points to act as both broker and lender for the same mortgage loan, however, fees and points may be divided between the broker and the lender as
they agree, but may not exceed the total charges otherwise permitted under this article: \textit{Provided}, That the fact of any fee, point or compensation is disclosed to the borrower consistent with the solicitation representation made to the borrower;

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

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

(4) Require the borrower to pay, in addition to any periodic interest, combined fees, compensation, or points of any kind to the lender and broker to arrange, originate, evaluate, maintain or service a loan secured by any encumbrance on residential property that exceed, in the aggregate, six percent of the loan amount financed, including any yield spread premium paid by the lender to the broker: \textit{Provided,} That reasonable closing costs, as defined in section one hundred two, article one, chapter forty-six-a of this code, payable to unrelated third parties may not be included within this limitation: \textit{Provided, however,} That no yield spread premium is permitted for any loan for which the annual percentage rate exceeds eighteen percent per year on the unpaid balance of the amount financed: \textit{Provided further,} That if no yield spread premium is charged, the aggregate of fees, compensation or points can be no greater than five percent of the loan amount financed. The financing of the fees and points are permissible and, where included as part
of the finance charge, does not constitute charging interest on interest. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations contained in this section applies;

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

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

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

(8) Secure a primary or subordinate mortgage loan in a principal amount that, when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, duly licensed or certified by the West Virginia real estate appraiser licensing and certification board and prepared in compliance with the uniform standards of professional appraisal practice;

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

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

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

(a) Every lender and broker licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state at his or her 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 the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each lender and broker licensee shall file with the commissioner on or before the fifteenth day of March of each year a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year in the form prescribed by the commissioner.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every lender or broker licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each lender and broker licensee is complying with the provisions hereof and for the purpose of verifying each lender
or broker licensee’s annual report. If the examination is made outside this state, the lender or broker 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 aggregate analysis of the information furnished in accordance with the provisions of subsection (b) or (c) of this section, but the 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 broker, lender, or loan originator license issued hereunder if he or she finds that the licensee or any owner, director, officer, member, partner, stockholder, employee or agent of the licensee:

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

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

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

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

(5) In the case of a foreign corporation, does not remain qualified to do business in this state; or
(6) Has committed any fraud or engaged in any dishonest activities with respect to any mortgage loan business in this state or failed to disclose any of the material particulars of any mortgage loan transaction in this state to anyone entitled to the information; or

(7) 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 purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section may not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the license of a licensee if he or she 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 the licensee were he or she then applying for the same. The commissioner may also suspend or revoke the license of a licensee pursuant to his or her authority under section thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any licensee shall not impair or affect the obligation of any preexisting lawful mortgage loan between the licensee and any obligor.

(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 license was suspended
or revoked have been eliminated or corrected and the commis-

er is satisfied that the grounds are not likely to recur.

(d) In addition to the authority conferred under this section,
the commissioner may impose a fine or penalty not exceeding
one thousand dollars upon any lender or broker required to be
licensed under this chapter who the commissioner determines
has violated any of the provisions of this chapter. For the
purposes of this section, each separate violation is subject to the
fine or penalty herein prescribed and each day after the date of
notification, excluding Sundays and holidays, that an unli-
censed person engages in the business or holds himself or
herself out to the general public as a mortgage lender or broker
shall constitute a separate violation.

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 is approved this the 18th day of March, 2002.

Governor