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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4379

(By Delegate R. M. Thompson)

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Passed March 7, 2002

In Effect Ninety Days from Passage

FILED

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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.

1 As used in this article:

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

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

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

17 (4) "Lender" means any person who makes or offers to
18 make or accepts or offers to accept or purchases or services any
19 primary or subordinate mortgage loan in the regular course of
20 business. A person is considered to be acting in the regular
21 course of business if he or she makes or accepts, or offers to

22 make or accept, more than five primary or subordinate mort-
23 gage loans in any one calendar year;

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

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

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

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

54 (9) "Commissioner" means the commissioner of banking of
55 this state;

56 (10) "Applicant" means a person who has applied for a
57 lender's, broker's or loan originator's license;

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

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

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

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

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

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

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

74 (iii) Additional charges permitted by this article;

75 (13) "Affiliated" means persons under the same ownership
76 or management control. As to corporations, limited liability
77 companies or partnerships, where common owners manage or
78 control a majority of the stock, membership interests or general
79 partnership interests of one or more such corporations, limited
80 liability companies or partnerships, those persons are consid-

81 ered affiliated. In addition, persons under the ownership or
82 management control of the members of an immediate family
83 shall be considered affiliated. For purposes of this section,
84 “immediate family” means mother, stepmother, father, stepfa-
85 ther, sister, stepsister, brother, stepbrother, spouse, child and
86 grandchildren;

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

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

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

1 (a) No person shall engage in this state in the business of
2 lender, broker or loan originator unless and until he or she shall
3 first obtain a license to do so from the commissioner, which
4 license remains unexpired, unsuspended and unrevoked, and no
5 foreign corporation shall engage in business in this state unless
6 it 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 the following:

10 (1) Federally insured depository institutions;

11 (2) Regulated consumer lender licensees;

12 (3) Insurance companies;

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

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

19 (6) By a nonprofit community development organization
20 making mortgage loans to promote home ownership or im-
21 provements for the disadvantaged which loans are subject to
22 federal, state, county or municipal government supervision and
23 oversight; or

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

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

34 (c) A person or entity designated in subsection (b) of this
35 section may take assignments of a primary or subordinate
36 mortgage loan from a licensed lender and the assignments of
37 said loans that they themselves could have lawfully made as
38 exempt from the provisions of this article under this section do
39 not make that person or entity subject to the licensing, bonding,
40 reporting or other provisions of this article except as the

41 defense or claim would be preserved pursuant to section one
42 hundred two, article two, chapter forty-six-a of this code.

43 (d) The placement or sale for securitization of a primary or
44 subordinate mortgage loan into a secondary market by a
45 licensee may not subject the warehouser or final securitization
46 holder or trustee to the provisions of this article: *Provided*, That
47 the warehouser, final securitization holder or trustee under an
48 arrangement is either a licensee, or person or entity entitled to
49 make exempt loans of that type under this section, or the loan
50 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.**

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

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

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

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

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

31 (4) Pay to the commissioner a license fee of one thousand
32 two hundred fifty dollars plus the actual cost of fingerprint
33 processing. If the commissioner shall determine that an
34 investigation outside this state is required to ascertain facts or
35 information relative to the applicant or information set forth in
36 the application, the applicant may be required to advance
37 sufficient funds to pay the estimated cost of the investigation.
38 An itemized statement of the actual cost of the investigation
39 outside this state shall be furnished to the applicant by the
40 commissioner and the applicant shall pay or shall have returned
41 to him or her, as the case may be, the difference between his or
42 her payment in advance of the estimated cost and the actual cost
43 of the investigation; and

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

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

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

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

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

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

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

73 (d) Application for a loan originator license shall be
74 submitted by the sponsoring mortgage broker prior to the loan
75 originator engaging in mortgage activity, in writing under oath,
76 on a form prescribed by the commissioner. At the time of
77 making application for a loan originator license, the loan
78 originator therefor shall:

79 (1) Submit a statement under oath that he or she originates
80 loans exclusively for one broker, together with an acknowledg-
81 ment of employment by the sponsoring mortgage broker;

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

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

87 (4) If at any time a loan originator ceases working for the
88 sponsoring mortgage broker indicated on the license applica-
89 tion, such loan originator and sponsoring mortgage broker shall
90 notify the commissioner within fifteen business days and return
91 the original loan originator license to the division of banking.
92 The license of a loan originator is not effective during any
93 period when that person is not employed by a sponsoring
94 mortgage broker licensed under this article, and a loan origina-
95 tor shall not be employed simultaneously by more than one
96 sponsoring mortgage broker.

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

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

106 (g) The commissioner may elect to reduce or waive the
107 application fees, bond amounts and net worth requirements
108 imposed by this section for nonprofit corporations whose
109 residential mortgage lending or brokering activities provide

110 housing primarily to households or persons below the HUD-
111 established median income for their area of residence.

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

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

1 (a) Upon an applicant's full compliance with the provisions
2 of section four of this article, the commissioner shall investigate
3 the relevant facts with regard to the applicant and his or her
4 application for a lender's, broker's or loan originator's license,
5 as the case may be. Upon the basis of the application and all
6 other information before him or her, the commissioner shall
7 make and enter an order denying the application and refusing
8 the license sought if the commissioner finds that:

9 (1) The applicant does not have available the net worth
10 required by the provisions of section four of this article, if
11 applicable;

12 (2) The financial responsibility, character, reputation,
13 experience or general fitness of the applicant, including its
14 officers, directors, principals and employees, reasonably
15 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
19 to perform any duty or obligation for which the license sought
20 could be suspended or revoked were it then issued and out-
21 standing.

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

27 (b) Every application for a lender's, broker's or loan
28 originator's license shall be passed upon and the license issued
29 or refused within ninety days after the applicant therefor has
30 fully complied with the provisions of section four of this article.
31 Under no circumstances whatever shall a person or licensee act
32 as a broker and lender in the same transaction. Whenever an
33 application for a lender's, broker's or loan originator's license
34 is denied and the license sought is refused, which refusal has
35 become final, the commissioner shall retain all fees to cover
36 administrative costs of processing the broker, lender or loan
37 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.

1 (a) It shall be stated on the license, whether it is a lender's,
2 broker's or loan originator's license, the location at which the
3 business is to be conducted and the full name of the licensee. A
4 broker's license shall be conspicuously posted in the licensee's
5 place of business in this state and a lender's license shall be
6 conspicuously posted in the licensee's place of business if in
7 this state. No license shall be transferable or assignable. No
8 licensee may offer a franchise under that license to another
9 person. The commissioner may allow licensees to have branch
10 offices without requiring additional licenses provided the
11 location of all branch offices is registered with the division of
12 banking by the licensee. Whenever a licensee changes his or her
13 place of business to a location other than that set forth in his or
14 her license and branch registration, he or she shall give written
15 notice thirty days prior to such change to the commissioner.

16 (b) Every lender's or broker's license shall, unless sooner
17 suspended or revoked, expire on the thirty-first day of Decem-
18 ber of each year and any license may be renewed each year in
19 the same manner, for the same license fee or fees specified
20 above and upon the same basis as an original license is issued
21 in accordance with the provisions of section five of this article.
22 Every loan originator's license shall, unless sooner suspended
23 or revoked, expire on the thirtieth day of June of every fifth
24 year beginning in two thousand five, and any license may be
25 renewed in the same manner, for the same license fee specified
26 above and in accordance with section five of this article. All
27 applications for the renewal of licenses shall be filed with the
28 commissioner at least ninety days before the expiration thereof.

29 (c) Beginning with renewal applications in the year two
30 thousand two, a broker's license may not be renewed unless that

31 licensee's executive officer certifies to the commissioner on the
32 renewal application that every loan originator employed by that
33 licensed broker has received at least seven hours of continuing
34 education in the prior year. Both the course of instruction and
35 the entity providing such continuing education must receive
36 prior approval from the commissioner as satisfying the continu-
37 ing education requirement established herein before the
38 commissioner may accept a certification from a licensee. The
39 commissioner shall make available a list of entities and courses
40 that have been approved for continuing education hours.

**§31-17-8. Maximum interest rate on subordinate loans; prepay-
ment 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 may 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
6 debt, in whole or in part, at any time and shall receive a rebate
7 for any unearned finance charge, exclusive of any points,
8 investigation fees and loan origination fees, which rebate shall
9 be computed 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 (g) 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 or points
16 have been charged by the licensee, the charges may not be

17 imposed again in any refinancing of that loan or any additional
18 loan on that property made within twenty-four months thereof,
19 unless the new loan has a reasonable, tangible net benefit to the
20 borrower considering all of the circumstances, including the
21 terms of both the new and the refinanced loans, the cost of the
22 new loan and the borrower's circumstances. The licensee shall
23 document this benefit in writing on a form prescribed by the
24 commissioner and maintain such documentation in the loan file.
25 To the extent this subdivision overrides the preemption on
26 limiting points and other charges on first lien residential
27 mortgage loans contained in the United States Depository
28 Institutions Deregulation and Monetary Control Act of 1980, 12
29 U.S.C. §1735f-7a, the state law limitations contained in this
30 section shall apply.

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

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

46 (g) Except for fees for services provided by unrelated third
47 parties for appraisals, inspections, title searches and credit
48 reports, no application fee may be allowed whether or not the
49 mortgage loan is consummated; however, the borrower may be

50 required to reimburse the licensee for actual expenses incurred
51 by the licensee in a purchase money transaction after accep-
52 tance and approval of a mortgage loan proposal made in
53 accordance with the provisions of this article which is not
54 consummated because of:

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

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

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

61 (i) No licensee shall induce or permit any borrower to
62 become obligated to the licensee under this article, directly or
63 contingently, or both, under more than one subordinate mort-
64 gage loan at the same time for the purpose or with the result of
65 obtaining greater charges than would otherwise be permitted
66 under the provisions of this article.

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

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

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

72 (3) Any requirement that more than one installment be
73 payable in any one installment period, or that the amount of any
74 installment be greater or less than that of any other installment,
75 except for the final installment which may be in a lesser
76 amount, or unless the loan is structured as a revolving line of
77 credit having no set final payment date;

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

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

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

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

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

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

101 (1) Collect a fee not disclosed to the borrower; collect any
102 attorney fee at closing in excess of the fee that has been or will
103 be remitted to the attorney; collect a fee for a product or service
104 where the product or service is not actually provided; misrep-
105 resent the amount charged by or paid to a third party for a product
106 or service; or collect duplicate fee or points to act as both
107 broker and lender for the same mortgage loan, however, fees
108 and points may be divided between the broker and the lender as

109 they agree, but may not exceed the total charges otherwise
110 permitted under this article: *Provided*, That the fact of any fee,
111 point or compensation is disclosed to the borrower consistent
112 with the solicitation representation made to the borrower;

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

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

125 (4) Require the borrower to pay, in addition to any periodic
126 interest, combined fees, compensation, or points of any kind to
127 the lender and broker to arrange, originate, evaluate, maintain
128 or service a loan secured by any encumbrance on residential
129 property that exceed, in the aggregate, six percent of the loan
130 amount financed, including any yield spread premium paid by
131 the lender to the broker: *Provided*, That reasonable closing
132 costs, as defined in section one hundred two, article one,
133 chapter forty-six-a of this code, payable to unrelated third
134 parties may not be included within this limitation: *Provided*,
135 *however*, That no yield spread premium is permitted for any
136 loan for which the annual percentage rate exceeds eighteen
137 percent per year on the unpaid balance of the amount financed:
138 *Provided further*, That if no yield spread premium is charged,
139 the aggregate of fees, compensation or points can be no greater
140 than five percent of the loan amount financed. The financing of
141 the fees and points are permissible and, where included as part

142 of the finance charge, does not constitute charging interest on
143 interest. To the extent that this section overrides the preemption
144 on limiting points and other charges on first lien residential
145 mortgage loans contained in the United States Depository
146 Institutions Deregulation and Monetary Control Act of 1980, 12
147 U.S.C. §1735f-7a, the state law limitations contained in this
148 section applies;

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

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

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

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

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

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

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

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

13 (b) Each lender and broker licensee shall file with the
14 commissioner on or before the fifteenth day of March of each
15 year a report under oath or affirmation concerning his or her
16 business and operations in this state for the preceding license
17 year in the form 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 lender or broker licensee pertaining to primary
21 and subordinate mortgage loans made in this state under the
22 provisions of this article, for the purpose of determining
23 whether each lender and broker licensee is complying with the
24 provisions hereof and for the purpose of verifying each lender

25 or broker licensee's annual report. If the examination is made
26 outside this state, the lender or broker licensee shall pay the
27 cost thereof in like manner as applicants are required to pay the
28 cost of investigations outside this state.

29 (d) The commissioner shall publish annually an aggregate
30 analysis of the information furnished in accordance with the
31 provisions of subsection (b) or (c) of this section, but the
32 individual reports shall not be public records and shall not be
33 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 broker,
2 lender, or loan originator license issued hereunder if he or she
3 finds that the licensee or any owner, director, officer, member,
4 partner, stockholder, employee or agent of the 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 the license; or

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

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

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

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

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

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

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

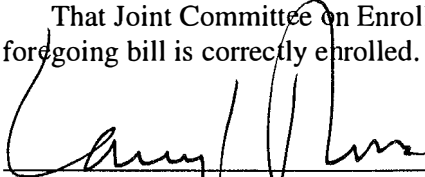
45 (c) The commissioner may reinstate a suspended license, or
46 issue a new license to a licensee whose license has been
47 revoked, if the grounds upon which any license was suspended

48 or revoked have been eliminated or corrected and the commis-
49 sioner is satisfied that the grounds are not likely to recur.

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

Enr. Com. Sub. for H. B. 4379] 24

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



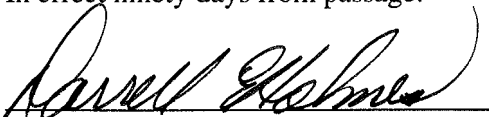
Chairman Senate Committee



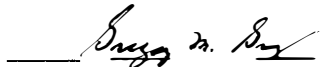
Chairman House Committee

Originating in the House.

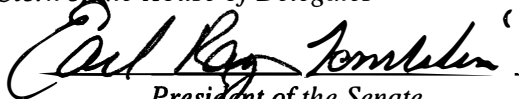
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

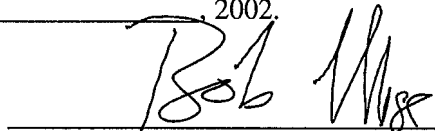


President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

Date 3/12/02

Time 3:15 pm