AN ACT to amend and reenact §31-17-1, §31-17-2 and §31-17-11 of the Code of West Virginia, 1931, as amended, all relating to mortgage broker, lender and loan originator licenses; requiring certain licensees to license all loan originators; and permitting the Banking Commissioner to enter into information sharing agreements with other mortgage regulators.

Be it enacted by the Legislature of West Virginia:

That §31-17-1, §31-17-2 and §31-17-11 of the Code of West Virginia, 1931, 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

e) 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 considered 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 licensed mortgage broker, under the direct supervision and control of a licensee who is engaged in brokering activity, 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 may engage in this state in the business of lender, broker or loan originator unless and until he or she first obtains a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation may engage in business in this state unless it is registered with the secretary of state to transact business in this state.

(b) An entity applying for or holding both a lender and broker license shall license all of its individual loan originators if that entity brokers a majority of its residential mortgage loans. The determination of whether an entity brokers the majority of its residential mortgage loans is based upon the most recent annual report filed with the division pursuant to section eleven of this article. A new applicant applying for both a lender license and a broker license shall license all of its loan originators unless the applicant can demonstrate, through data compiled for other state regulators, that it acts as a lender for a majority of its residential mortgage loans made.

(c) Brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders and loan originators are exempt from the tax imposed by article fifteen, chapter eleven of this code beginning on the first day of January, two thousand four.

(d) 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.

(e) A person or entity designated in subsection (c) 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.

(f) 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.
§31-17-11. 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 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 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.
(e) The commissioner may enter into cooperative and information sharing agreements with regulators in other states or with federal authorities to discharge his or her responsibilities under this article.
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 90th day of March, 2007.

Governor