WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 292

(Senators Minard, Jenkins and Plymale, original sponsors)

[Passed March 6, 2008; in effect ninety days from passage.]
AN ACT to amend and reenact §31-17-4 of the Code of West Virginia, 1931, as amended, relating to permitting bond claims by the Commissioner of Banking to collect unpaid civil administrative penalties and unpaid examination invoices while allowing priority for pending consumer claims.

Be it enacted by the Legislature of West Virginia:
That §31-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§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 or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice 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 or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice 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
(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.

(i) If a claim for a consumer restitution is pending on a bond required pursuant to this section when the commissioner makes a claim for a civil administrative penalty or an unpaid examination invoice, the consumer claim shall be resolved before any payments may be made for an unpaid penalty or examination invoice.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this 27th the Day of 2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2008

Time 9:40 am