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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

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COMMITTEE SUBSTITUTE

FOR

**ENROLLED**  
**Senate Bill No. 292**

(SENATORS MINARD, JENKINS AND  
PLYMALE, *original sponsors*)

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[Passed March 6, 2008; in effect ninety days from passage.]

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2008 MAR 27 AM 11: 74

CLERK OF SENATE

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COMMITTEE SUBSTITUTE

FOR

**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.**

1 (a) Application for a lender's or broker's license shall  
2 each year be submitted in writing under oath, in the  
3 form prescribed by the commissioner, and shall contain  
4 the full name and address of the applicant and, if the  
5 applicant is a partnership, limited liability company or  
6 association, of every member thereof, and, if a  
7 corporation, of each officer, director and owner of ten  
8 percent or more of the capital stock thereof and further  
9 information as the commissioner may reasonably  
10 require. Any application shall also disclose the location  
11 at which the business of lender or broker is to be  
12 conducted. Application for a loan originator's license  
13 shall be initially submitted prior to the first day of  
14 September, two thousand two, and thereafter in every  
15 fifth year beginning in two thousand five. If the loan  
16 originator changes sponsoring mortgage brokers, a new  
17 application must be submitted in accordance with this  
18 article.

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

21 (1) If a foreign corporation, submit a certificate from  
22 the Secretary of State certifying that the applicant is  
23 registered with the Secretary of State to transact  
24 business in this state;

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

29       (3) File with the commissioner a bond in favor of the  
30 state for the benefit of consumers or for a claim by the  
31 commissioner for an unpaid civil administrative penalty  
32 or an unpaid examination invoice in the amount of one  
33 hundred thousand dollars, in a form and with  
34 conditions as the commissioner may prescribe, and  
35 executed by a surety company authorized to do business  
36 in this state;

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

52       (5) Submit proof that the applicant is a business in  
53 good standing in its state of incorporation, or if not a  
54 corporation, its state of business registration, and a full  
55 and complete disclosure of any litigation or unresolved  
56 complaint filed by a governmental authority or class

57 action lawsuit on behalf of consumers relating to the  
58 operation of the license applicant.

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

61 (1) If a foreign corporation, submit a certificate from  
62 the Secretary of State certifying that the applicant is  
63 registered with the Secretary of State to transact  
64 business in this state;

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

68 (3) File with the commissioner a bond in favor of the  
69 state for the benefit of consumers or for a claim by the  
70 commissioner for an unpaid civil administrative penalty  
71 or an unpaid examination invoice in the amount of fifty  
72 thousand dollars, in a form and with conditions as the  
73 commissioner may prescribe, and executed by a surety  
74 company authorized to do business in this state:  
75 *Provided*, That the bond must be in the amount of one  
76 hundred thousand dollars before a broker may  
77 participate in a table-funded residential mortgage loan;

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

81 (5) Submit proof that the applicant is a business in  
82 good standing in its state of incorporation, or if not a  
83 corporation, its state of business registration, and a full  
84 and complete disclosure of any litigation or unresolved  
85 complaint filed by a governmental authority or class

86 action lawsuit on behalf of consumers relating to the  
87 operation of the license applicant.

88 (d) Application for a loan originator license shall be  
89 submitted by the sponsoring mortgage broker prior to  
90 the loan originator engaging in mortgage activity, in  
91 writing under oath, on a form prescribed by the  
92 commissioner. At the time of making application for a  
93 loan originator license, the loan originator therefor  
94 shall:

95 (1) Submit a statement under oath that he or she  
96 originates loans exclusively for one broker, together  
97 with an acknowledgment of employment by the  
98 sponsoring mortgage broker;

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

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

105 (4) If at any time a loan originator ceases working for  
106 the sponsoring mortgage broker indicated on the license  
107 application, such loan originator and sponsoring  
108 mortgage broker shall notify the commissioner within  
109 fifteen business days and return the original loan  
110 originator license to the Division of Banking. The  
111 license of a loan originator is not effective during any  
112 period when that person is not employed by a  
113 sponsoring mortgage broker licensed under this article  
114 and a loan originator shall not be employed  
115 simultaneously by more than one sponsoring mortgage

116 broker.

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

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

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

134 (h) Every broker and lender licensee shall pay a fee of  
135 five dollars for each residential mortgage loan  
136 originated, made or brokered in a calendar year. This  
137 fee shall be paid semiannually to the Division of  
138 Banking and remitted with the report required pursuant  
139 to subsection (b), section eleven of this article for loans  
140 made, brokered or originated during the last six months  
141 of the previous calendar year and with the lender or  
142 broker license renewal application required pursuant to  
143 subsection (b), section seven of this article for the loans  
144 made, brokered or originated in the first six months of  
145 that calendar year. In the event a licensee ceases  
146 operation, it shall remit any fees due since the last

147 reporting period when it relinquishes its license.

148 (i) If a claim for a consumer restitution is pending on  
149 a bond required pursuant to this section when the  
150 commissioner makes a claim for a civil administrative  
151 penalty or an unpaid examination invoice, the consumer  
152 claim shall be resolved before any payments may be  
153 made for an unpaid penalty or examination invoice.

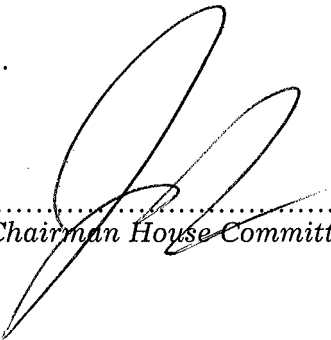
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Enr. Com. Sub for S. B. No. 292] 8

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

  
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Chairman Senate Committee

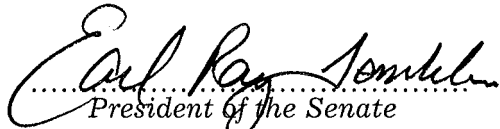
  
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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
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Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved ..... this  
the 27<sup>th</sup> Day of March ....., 2008.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 21 2008

Time A. G. Horn