WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2962

(By Delegates Perry, Hartman, Moore, Reynolds, Hall, Walters, Miller, Azinger and Ashley)

Passed February 22, 2011

In Effect Ninety Days From Passage
AN ACT to amend and reenact §31-17-12 of the Code of West Virginia, 1931, as amended, relating to imposition of a fine or penalty by the Commissioner of Banking on residential mortgage brokers and lenders for a violation of the West Virginia Residential Mortgage Lender, Broker and Servicer Act; increasing the maximum amount of a fine or penalty that may be imposed from $1000 to $2000 for each violation; removing the requirement of prior notification from the commissioner before a fine or penalty may be imposed upon an unlicensed person who engages in the business or holds himself or herself out to the public as a mortgage lender or mortgage broker; and clarifying that a fine or penalty may be imposed for a violation of the Act.
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Be it enacted by the Legislature of West Virginia:

That §31-17-12 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.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license; penalties and fines for violation of this article.

(a) The commissioner may suspend or revoke any broker or lender 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;

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

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

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

(5) In the case of a foreign corporation, does not remain qualified to do business in this state;
(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 does 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 commissioner 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 $2,000 upon any lender or broker required to be
licensed under this article who the commissioner determines
has violated any of the provisions of this article. For the
purposes of this section, each separate violation is subject to
the fine or penalty provided in this section. Each day
excluding Sundays and holidays, that an unlicensed person
engages in the business or holds himself or herself out to the
general public as a mortgage lender or broker is a separate
violation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within happened this the 31st day of March, 2011.

Governor
PRESENTED TO THE GOVERNOR

FEB 25 2011

Time