

1 **Senate Bill No. 267**

2 (By Senators Minard and McCabe)

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4 [Introduced January 25, 2011; referred to the Committee on
5 Banking and Insurance.]
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10 A BILL to amend and reenact §31-17-12 of the Code of West Virginia,
11 1931, as amended, relating to the Commissioner of Banking's
12 imposition of a fine or penalty on residential mortgage
13 brokers and lenders; increasing the maximum amount of a fine
14 or penalty that may be imposed from \$1000 per day to \$2000 per
15 day for each violation; providing that each day, excluding
16 Sundays and holidays, that an unlicensed person holds himself
17 or herself out to the general public as a mortgage lender or
18 broker constitutes a separate violation; and removing the need
19 for prior notification from the commissioner before a fine or
20 penalty may be assessed for unlicensed activity.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §31-17-12 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted to read as follows:

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

26 **§31-17-12. Grounds for suspension or revocation of license;**

1 **suspension and revocation generally; reinstatement**
2 **or new license.**

3 (a) The commissioner may suspend or revoke any broker or
4 lender license issued hereunder if he or she finds that the
5 licensee or any owner, director, officer, member, partner,
6 stockholder, employee or agent of the licensee:

7 (1) Has knowingly violated any provision of this article or
8 any order, decision or rule of the commissioner lawfully made
9 pursuant to the authority of this article;

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

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

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

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

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

23 (7) Has otherwise demonstrated bad faith, dishonesty or any
24 other quality indicating that the business of the licensee in this
25 state has not been or will not be conducted honestly or fairly
26 within the purpose of this article. It shall be a demonstration of

1 bad faith and an unfair or deceptive act or practice to engage in
2 a pattern of making loans where the consumer has insufficient
3 sources of income to timely repay the debt and the lender had the
4 primary intent to acquire the property upon default rather than to
5 derive profit from the loan. This section may not limit any right
6 the consumer may have to bring an action for a violation of section
7 one hundred four, article six, chapter forty-six-a of this code in
8 an individual case.

9 The commissioner may also suspend or revoke the license of a
10 licensee if he or she finds the existence of any ground upon which
11 the license could have been refused or any ground which would be
12 cause for refusing a license to the licensee were he or she then
13 applying for the same. The commissioner may also suspend or revoke
14 the license of a licensee pursuant to his or her authority under
15 section thirteen, article two, chapter thirty-one-a of this code.

16 (b) The suspension or revocation of the license of any
17 licensee does not impair or affect the obligation of any
18 preexisting lawful mortgage loan between the licensee and any
19 obligor.

20 (c) The commissioner may reinstate a suspended license, or
21 issue a new license to a licensee whose license has been revoked,
22 if the grounds upon which any license was suspended or revoked have
23 been eliminated or corrected and the commissioner is satisfied that
24 the grounds are not likely to recur.

25 (d) In addition to the authority conferred under this section,
26 the commissioner may impose a fine or penalty not exceeding \$1000

1 \$2,000 upon any lender or broker required to be licensed under this
2 ~~chapter article~~ who the commissioner determines has violated any of
3 the provisions of this ~~chapter article~~. For the purposes of this
4 section, each separate violation is subject to the fine or penalty
5 ~~herein prescribed and~~ provided in this section. Each day ~~after the~~
6 ~~date of notification,~~ excluding Sundays and holidays, that an
7 unlicensed person engages in the business or holds himself or
8 herself out to the general public as a mortgage lender or broker
9 ~~shall constitute~~ is a separate violation.

(NOTE: The purpose of this bill is to increase the amount of a fine or penalty the Commissioner of Banking may impose on residential mortgage brokers and lenders for violations of this article.)

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)

BANKING AND INSURANCE COMMITTEE AMENDMENTS

On pages one and two, section twelve, by striking out the section caption and inserting in lieu thereof a new section caption to read as follows:

§31-13-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license; penalties and fines for violation of this article.

And,

By striking out the title and inserting in lieu thereof a new title, to read as follows:

Eng. Senate Bill No. 267--A BILL to amend and reenact §31-17-12 of the Code of West Virginia, 1931, as amended, relating to the 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 \$1,000 per day to \$2,000 per day for each violation; providing that 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; removing the requirement for prior notification from the commissioner before a fine or penalty may be assessed for an unlicensed person engaged in the business or holding himself or herself out to the general public as a mortgage lender or broker; and clarifying that a fine or penalty may be imposed for a violation of the Act.