

Senate Bill No. 267

(By Senators Minard and McCabe)

[Introduced January 25, 2011; referred to
the Committee on Banking and Insurance.]

A BILL to amend and reenact §31-17-12 of the Code of West Virginia, 1931, as amended, relating to the Commissioner of Banking's imposition of a fine or penalty on residential mortgage brokers and lenders; increasing the maximum amount of a fine or penalty that may be imposed from \$1000 per day to \$2000 per day for each violation; providing that each day, excluding Sundays and holidays, that an unlicensed person holds himself or herself out to the general public as a mortgage lender or broker constitutes a separate violation; and removing the need for prior notification from the commissioner before a fine or penalty may be assessed for unlicensed activity.

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; sus-
pension and revocation generally; reinstatement or
new license.**

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

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

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

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

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

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

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

21 (7) Has otherwise demonstrated bad faith, dishonesty or
22 any other quality indicating that the business of the licensee
23 in this state has not been or will not be conducted honestly
24 or fairly within the purpose of this article. It shall be a
25 demonstration of bad faith and an unfair or deceptive act or
26 practice to engage in a pattern of making loans where the
27 consumer has insufficient sources of income to timely repay
28 the debt and the lender had the primary intent to acquire the
29 property upon default rather than to derive profit from the
30 loan. This section may not limit any right the consumer may
31 have to bring an action for a violation of section one hundred
32 four, article six, chapter forty-six-a of this code in an
33 individual case.

34 The commissioner may also suspend or revoke the license
35 of a licensee if he or she finds the existence of any ground
36 upon which the license could have been refused or any
37 ground which would be cause for refusing a license to the

38 licensee were he or she then applying for the same. The
39 commissioner may also suspend or revoke the license of a
40 licensee pursuant to his or her authority under section
41 thirteen, article two, chapter thirty-one-a of this code.

42 (b) The suspension or revocation of the license of any
43 licensee does not impair or affect the obligation of any
44 preexisting lawful mortgage loan between the licensee and
45 any obligor.

46 (c) The commissioner may reinstate a suspended license, or
47 issue a new license to a licensee whose license has been
48 revoked, if the grounds upon which any license was sus-
49 pended or revoked have been eliminated or corrected and the
50 commissioner is satisfied that the grounds are not likely to
51 recur.

52 (d) In addition to the authority conferred under this
53 section, the commissioner may impose a fine or penalty not
54 exceeding ~~\$1000~~ \$2,000 upon any lender or broker required
55 to be licensed under this ~~chapter~~ article who the commis-
56 sioner determines has violated any of the provisions of this
57 ~~chapter~~ article. For the purposes of this section, each
58 separate violation is subject to the fine or penalty ~~herein~~
59 ~~prescribed and~~ provided in this section. Each day ~~after the~~

60 ~~date of notification~~, excluding Sundays and holidays, that an
 61 unlicensed person engages in the business or holds himself or
 62 herself out to the general public as a mortgage lender or
 63 broker ~~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 page 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.