

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 551

(By Senator Snyder)

[Originating in the Committee on Banking and Insurance;
reported February 21, 2012.]

A BILL to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating to prohibitions on primary and subordinate mortgage loans.

Be it enacted by the Legislature of West Virginia:

That §31-17-8 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.**

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on

lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

1 (a) The maximum rate of finance charges on or in
2 connection with any subordinate mortgage loan may not
3 exceed eighteen percent per year on the unpaid balance of
4 the amount financed.

5 (b) A borrower shall have the right to prepay his or her
6 debt, in whole or in part, at any time and shall receive a
7 rebate for any unearned finance charge, exclusive of any
8 points, investigation fees and loan origination fees, which
9 rebate shall be computed under the actuarial method.

10 (c) Except as provided by section one hundred nine,
11 article three, chapter forty-six-a of this code and by subsec-
12 tion (g) of this section, no additional charges may be made,
13 nor may any charge permitted by this section be assessed
14 unless the loan is made: *Provided*, That in the event the loan
15 is not made, the licensee is not required to refund an ap-
16 praisal fee that is collected from a loan applicant by the
17 licensee and paid to an unrelated third-party appraiser
18 unless the fee is required to be refunded pursuant to federal
19 law.

20 (d) Where loan origination fees, investigation fees or
21 points have been charged by the licensee, the charges may
22 not be imposed again in any refinancing of that loan or any
23 additional loan on that property made within twenty-four
24 months thereof, unless the new loan has a reasonable,
25 tangible net benefit to the borrower considering all of the
26 circumstances, including the terms of both the new and the
27 refinanced loans, the cost of the new loan and the borrower's
28 circumstances. The licensee shall document this benefit in
29 writing on a form prescribed by the commissioner and
30 maintain ~~such~~ the documentation in the loan file. To the
31 extent this subdivision overrides the preemption on limiting
32 points and other charges on first lien residential mortgage
33 loans contained in the United States Depository Institutions
34 Deregulation and Monetary Control Act of 1980, 12 U. S. C.
35 §1735f-7a, the state law limitations contained in this section
36 shall apply.

37 (e) Notwithstanding other provisions of this section, a
38 delinquent charge or late charge may be charged on any
39 installment made ten or more days after the regularly
40 scheduled due date in accordance with section one hundred

41 twelve or one hundred thirteen, article three, chapter
42 forty-six-a of this code, whichever is applicable. The charge
43 may be made only once on any one installment during the
44 term of the primary or subordinate mortgage loan.

45 (f) Hazard insurance may be required by the lender. The
46 charges for any insurance shall not exceed the standard rate
47 approved by the Insurance Commissioner for the insurance.
48 Proof of all insurance in connection with primary and
49 subordinate mortgage loans subject to this article shall be
50 furnished to the borrower within thirty days from and after
51 the date of application therefor by the borrower.

52 (g) Except for fees for services provided by unrelated
53 third parties for appraisals, inspections, title searches and
54 credit reports, no application fee may be allowed whether or
55 not the mortgage loan is consummated; however, the bor-
56 rower may be required to reimburse the licensee for actual
57 expenses incurred by the licensee in a purchase money
58 transaction after acceptance and approval of a mortgage loan
59 proposal made in accordance with the provisions of this
60 article which is not consummated because of:

61 (1) The borrower's willful failure to close the loan; or

62 (2) The borrower's false or fraudulent representation of
63 a material fact which prevents closing of the loan as pro-
64 posed.

65 (h) No licensee shall make, offer to make, accept or offer
66 to accept any primary or subordinate mortgage loan except
67 on the terms and conditions authorized in this article.

68 (i) No licensee shall induce or permit any borrower to
69 become obligated to the licensee under this article, directly
70 or contingently, or both, under more than one subordinate
71 mortgage loan at the same time for the purpose or with the
72 result of obtaining greater charges than would otherwise be
73 permitted under the provisions of this article.

74 (j) No instrument evidencing or securing a primary or
75 subordinate mortgage loan shall contain:

76 (1) Any power of attorney to confess judgment;

77 (2) Any provision whereby the borrower waives any
78 rights accruing to him or her under the provisions of this
79 article;

80 (3) Any requirement that more than one installment be
81 payable in any one installment period, or that the amount of
82 any installment be greater or less than that of any other

83 installment, except for the final installment which may be in
84 a lesser amount, or unless the loan is structured as a revolv-
85 ing line of credit having no set final payment date;

86 (4) Any assignment of or order for the payment of any
87 salary, wages, commissions or other compensation for
88 services, or any part thereof, earned or to be earned;

89 (5) A requirement for compulsory arbitration which does
90 not comply with federal law; or

91 (6) Blank or blanks to be filled in after the consummation
92 of the loan. A borrower must be given a copy of every signed
93 document executed by the borrower at the time of closing.

94 (k) No licensee shall charge a borrower or receive from
95 a borrower money or other valuable consideration as
96 compensation before completing performance of all services
97 the licensee has agreed to perform for the borrower unless
98 the licensee also registers and complies with all requirements
99 set forth for credit service organizations in article six-c,
100 chapter forty-six-a of this code, including all additional
101 bonding requirements as may be established therein.

102 (l) No licensee shall make or broker revolving loans
103 secured by a primary or subordinate mortgage lien for the
104 retail purchase of consumer goods and services by use of a
105 lender credit card.

106 (m) In making any primary or subordinate mortgage
107 loan, no licensee may, and no primary or subordinate
108 mortgage lending transaction may, contain terms which:

109 (1) Collect a fee not disclosed to the borrower; collect any
110 attorney fee at closing in excess of the fee that has been or
111 will be remitted to the attorney; collect a fee for a product or
112 service where the product or service is not actually provided;
113 misrepresent the amount charged by or paid to a third party
114 for a product or service; or collect duplicate fee or points to
115 act as both broker and lender for the same mortgage loan,
116 however, fees and points may be divided between the broker
117 and the lender as they agree, but may not exceed the total
118 charges otherwise permitted under this article: *Provided*,
119 That the fact of any fee, point or compensation is disclosed
120 to the borrower consistent with the solicitation representa-
121 tion made to the borrower;

122 (2) Compensate, whether directly or indirectly, coerce or
123 intimidate an appraiser for the purpose of influencing the
124 independent judgment of the appraiser with respect to the
125 value of real estate that is to be covered by a deed of trust or
126 is being offered as security according to an application for a
127 primary or subordinate mortgage loan;

128 (3) Make or assist in making any primary or subordinate
129 mortgage loan with the intent that the loan will not be
130 repaid and that the lender will obtain title to the property
131 through foreclosure: *Provided*, That this subdivision shall
132 not apply to reverse mortgages obtained under the provisions
133 of article twenty-four, chapter forty-seven of this code;

134 (4) Require the borrower to pay, in addition to any
135 periodic interest, combined fees, compensation or points of
136 any kind to the lender and broker to arrange, originate,
137 evaluate, maintain or service a loan secured by any encum-
138 brance on residential property that exceed, in the aggregate,
139 six percent of the loan amount financed, including any yield
140 spread premium paid by the lender to the broker: *Provided*,
141 That reasonable closing costs, as defined in section one
142 hundred two, article one, chapter forty-six-a of this code,
143 payable to unrelated third parties may not be included
144 within this limitation: *Provided, however*, That no yield
145 spread premium is permitted for any loan for which the
146 annual percentage rate exceeds eighteen percent per year on
147 the unpaid balance of the amount financed: *Provided further*,
148 That if no yield spread premium is charged, the aggregate of

149 fees, compensation or points can be no greater than five
150 percent of the loan amount financed. The financing of the
151 fees and points are permissible and, where included as part
152 of the finance charge, does not constitute charging interest
153 on interest. To the extent that this section overrides the
154 preemption on limiting points and other charges on first lien
155 residential mortgage loans contained in the United States
156 Depository Institutions Deregulation and Monetary Control
157 Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations
158 contained in this section ~~applies~~ apply:

159 (5) Secure a primary or subordinate mortgage loan by
160 any security interest in personal property unless the personal
161 property is affixed to the residential dwelling or real estate;

162 (6) Allow or require a primary or subordinate mortgage
163 loan to be accelerated because of a decrease in the market
164 value of the residential dwelling that is securing the loan;

165 (7) Require terms of repayment which do not result in
166 continuous monthly reduction of the original principal
167 amount of the loan: *Provided*, That the provisions of this
168 subdivision may not apply to reverse mortgage loans ob-
169 tained under article twenty-four, chapter forty-seven of this

170 code, home equity, open-end lines of credit, bridge loans
171 used in connection with the purchase or construction of a
172 new residential dwelling or commercial loans for multiple
173 residential purchases;

174 (8) secure a primary or subordinate mortgage loan in a
175 principal amount that, when added to the aggregate total of
176 the outstanding principal balances of all other primary or
177 subordinate mortgage loans secured by the same property,
178 exceeds the fair market value of the property on the date that
179 the latest mortgage loan is made. For purposes of this
180 paragraph, a broker or lender may rely upon a bona fide
181 written appraisal of the property made by an independent
182 third-party appraiser, duly licensed or certified by the West
183 Virginia Real Estate Appraiser Licensing and Certification
184 Board and prepared in compliance with the uniform stan-
185 dards of professional appraisal practice: Provided, That
186 commencing January 1, 2012, and continuing until January
187 1, 2015, this prohibition does not apply to any mortgage
188 modification loan made in participation with and in compli-
189 ance with the federal Homes Affordable Modification
190 Program, a part of the federal Making Home Affordable

191 program, or any other mortgage modification loan funded
192 through any other federal or state program or litigation
193 settlement;

194 (9) Advise or recommend that the consumer not make
195 timely payments on an existing loan preceding loan closure
196 of a refinancing transaction; or

197 (10) Knowingly violate any provision of any other
198 applicable state or federal law regulating primary or subor-
199 dinate mortgage loans, including, without limitation, chapter
200 forty-six-a of this code.

(NOTE: The purpose of this bill is to provide an exception to current mortgage loan limitations to permit participation in a federal program providing home mortgage relief under certain circumstances. Under the program, a modification loan may exceed the fair market value of the property at the time of the loan.

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