

Senate Bill No. 336

(By Senator Minard)

[Introduced January 18, 2012; referred to
the Committee on Banking and Insurance; and then to
the Committee on Government Organization.]

A BILL to amend and reenact §31-17-2 of the Code of West Virginia, 1931, as amended, relating to license required for residential mortgage lenders and brokers and exemptions thereto; and eliminating the exemption for a lender under the regular supervision and examination for consumer compliance by any agency of the federal government.

Be it enacted by the Legislature of West Virginia:

That §31-17-2 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.**

**§31-17-2. License required for lender and broker originator;
exemptions.**

1 (a) A person may not engage in this state in the business
2 of lender or broker unless and until he or she first obtains a
3 license to do so from the commissioner, which license
4 remains unexpired, unsuspended and unrevoked, and no
5 foreign corporation may engage in business in this state
6 unless it is registered with the Secretary of State to transact
7 business in this state.

8 (b) All mortgage loan originators, as that term is defined
9 by section two, article seventeen-a of this chapter, shall
10 obtain a mortgage loan originator license pursuant to said
11 article.

12 (c) Brokerage fees, additional charges and finance
13 charges imposed by licensed mortgage brokers, lenders and
14 loan originators are exempt from the tax imposed by article
15 fifteen, chapter eleven of this code beginning on January 1,
16 2004.

17 (d) The provisions of this article do not apply to loans
18 made by the following:

- 19 (1) Federally insured depository institutions;
- 20 (2) Regulated consumer lender licensees;
- 21 (3) Insurance companies;

22 ~~(4) Any other lender under the regular supervision and~~
23 ~~examination for consumer compliance of any agency of the~~
24 ~~federal government;~~

25 (5) (4) Any agency or instrumentality of this state,
26 federal, county or municipal government or on behalf of the
27 agency or instrumentality;

28 ~~(6)~~ (5) By a nonprofit community development organiza-
29 tion making mortgage loans to promote home ownership or
30 improvements for the disadvantaged which loans are subject
31 to federal, state, county or municipal government supervision
32 and oversight; or

33 ~~(7)~~ (6) Habitat for Humanity International, Inc., and its
34 affiliates providing low-income housing within this state.
35 Loans made subject to this exemption may be assigned,
36 transferred, sold or otherwise securitized to any person and
37 shall remain exempt from the provisions of this article,
38 except as to reporting requirements in the discretion of the
39 commissioner where the person is a licensee under this
40 article. Nothing herein shall prohibit a broker licensed under
41 this article from acting as broker of an exempt loan and
42 receiving compensation as permitted under the provisions of
43 this article.

44 (e) The provisions of this article do not apply to loans
45 brokered by a federally insured depository institution.

46 (f) A person or entity designated in subsection (d) of this
47 section may take assignments of a primary or subordinate
48 mortgage loan from a licensed lender and the assignments of
49 said loans that they themselves could have lawfully made as
50 exempt from the provisions of this article under this section
51 do not make that person or entity subject to the licensing,
52 bonding, reporting or other provisions of this article except
53 as the defense or claim would be preserved pursuant to
54 section one hundred two, article two, chapter forty-six-a of
55 this code.

56 (g) The placement or sale for securitization of a primary
57 or subordinate mortgage loan into a secondary market by a
58 licensee may not subject the warehouser or final securitiza-
59 tion holder or trustee to the provisions of this article:
60 *Provided*, That the warehouser, final securitization holder or
61 trustee under an arrangement is either a licensee or person
62 or entity entitled to make exempt loans of that type under
63 this section, or the loan is held with right of recourse to a
64 licensee.

(NOTE: The purpose of this bill is to eliminate the exemption from licensing as a mortgage lender that may be available to subsidiaries of banks.

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