

COMMITTEE SUBSTITUTE

FOR

H. B. 2223

(BY DELEGATE(S) WALTERS AND FRICH)

(Originating in the House Committee on Finance.)

[February 4, 2015]

A BILL to amend and reenact §31-17-1 and §31-17-8 of the Code of West Virginia, 1931, as amended, all relating to mortgage loans subject to the West Virginia Residential Mortgage Lender, Broker and Servicer Act; including certain consumer credit sales in the definitions of “primary mortgage loan” and “subordinate mortgage loan”; defining “consumer credit sale”; and providing an exception to certain provisions of the Act for certain loan modifications or refinancing loans.

Be it enacted by the Legislature of West Virginia:

That §31-17-1 and §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.**

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (a) “Additional charges” means every type of charge arising
3 out of the making or acceptance of a primary or subordinate
4 mortgage loan, except finance charges, including, but not limited
5 to, official fees and taxes, reasonable closing costs and certain
6 documentary charges and insurance premiums and other charges
7 which definition is to be read in conjunction with and permitted
8 by section one hundred nine, article three, chapter forty-six-a of
9 this code;

10 (b) “Affiliated” means persons under the same ownership or
11 management control. As to corporations, limited liability
12 companies or partnerships, where common owners manage or
13 control a majority of the stock, membership interests or general
14 partnership interests of one or more such corporations, limited

15 liability companies or partnerships, those persons are considered
16 affiliated. In addition, persons under the ownership or manage-
17 ment control of the members of an immediate family shall be
18 considered affiliated. For purposes of this section, “immediate
19 family” means mother, stepmother, father, stepfather, sister,
20 stepsister, brother, stepbrother, spouse, child and grandchildren;

21 (c) “Amount financed” means the total of the following
22 items to the extent that payment is deferred:

23 (1) The cash price of the goods, services or interest in land,
24 less the amount of any down payment, whether made in cash or
25 in property traded in;

26 (2) The amount actually paid or to be paid by the seller
27 pursuant to an agreement with the buyer to discharge a security
28 interest in or a lien on property traded in; and

29 (3) If not included in the cash price:

30 (A) Any applicable sales, use, privilege, excise or documen-
31 tary stamp taxes;

32 (B) Amounts actually paid or to be paid by the seller for
33 registration, certificate of title or license fees; and

34 (C) Additional charges permitted by this article;

35 (d) "Applicant" means a person who has applied for a lender
36 or broker license;

37 (e) "Broker" means any person acting in the regular course
38 of business who, for a fee or commission or other consideration,
39 negotiates or arranges, or who offers to negotiate or arrange, or
40 originates or assigns a primary or subordinate mortgage loan
41 between a lender and a borrower. A person is considered to be
42 acting in the regular course of business if he or she negotiates or
43 arranges, or offers to negotiate or arrange, or originates, pro-
44 cesses or assigns any primary or subordinate mortgage loans in
45 any one calendar year; or if he or she seeks to charge a borrower
46 or receive from a borrower money or other valuable consider-
47 ation in any primary or subordinate mortgage transaction before
48 completing performance of all broker services that he or she has
49 agreed to perform for the borrower;

50 (f) "Brokerage fee" means the fee or commission or other
51 consideration charged by a broker or loan originator for the
52 services described in subdivision (e) of this section;

53 (g) "Commissioner" means the Commissioner of Financial
54 Institutions of this state;

55 (h) ‘Consumer credit sale’ means a consumer credit sale as
56 defined in subdivision thirteen, section one hundred-two, article
57 one, chapter forty-six-a of this code;

58 (h) (i) “Finance charge” means the sum of all interest and
59 similar charges payable directly or indirectly by the debtor
60 imposed or collected by the lender incident to the extension of
61 credit as coextensive with the definition of “loan finance charge”
62 set forth in section one hundred two, article one, chapter forty-
63 six-a of this code;

64 (h) (j) “Lender” means any person who makes or offers to
65 make or accepts or offers to accept or purchases or services any
66 primary or subordinate mortgage loan in the regular course of
67 business. A person is considered to be acting in the regular
68 course of business if he or she makes or accepts, or offers to
69 make or accept, any primary or subordinate mortgage loans in
70 any one calendar year.

71 “Lender” does not include any person who does not cur-
72 rently have and has never held a residential mortgage lender
73 license in this or in any other state and who makes no more than

74 three primary or subordinate mortgage loans in any calendar year
75 to purchasers of any dwelling owned by that person: *Provided*,
76 That the person is required to report within thirty days of the
77 date of the loan any such mortgage loan to the Division of
78 Financial Institutions on a form available from the division upon
79 request. Failure to timely report as required by this subsection
80 may result in imposition by the commissioner of a civil adminis-
81 trative penalty of up to \$250;

82 ~~(j)~~ (k) “Licensee” means any person duly licensed by the
83 commissioner under the provisions of this article or article
84 seventeen-a of this chapter as a lender, broker or mortgage loan
85 originator;

86 ~~(k)~~ (l) “Nationwide Mortgage Licensing System and
87 Registry” means a mortgage licensing system developed and
88 maintained by the Conference of State Bank Supervisors and the
89 American Association of Residential Mortgage Regulators for
90 the licensing and registration of licensed mortgage brokers and
91 lenders licensed under this article and mortgage loan originators
92 licensed under article seventeen-a of this chapter;

93 ~~(t)~~ (m) “Person” means an individual, partnership, associa-
94 tion, trust, corporation or any other legal entity, or any combina-
95 tion thereof;

96 ~~(m)~~ (n) “Primary mortgage loan” means any loan or con-
97 sumer credit sale primarily for personal, family or household use
98 that is secured by a mortgage, deed of trust or other equivalent
99 consensual security interest on a dwelling as defined in Section
100 103(w) of the Truth in Lending Act or residential real estate
101 upon which is constructed or intended to be constructed a
102 dwelling;

103 ~~(n)~~ (o) “Servicing” or “servicing a residential mortgage
104 loan” means through any medium or mode of communication the
105 collection or remittance for, or the right or obligation to collect
106 or remit for another lender, note owner or noteholder, payments
107 of principal, interest, including sales finance charges in a
108 consumer credit sale, and escrow items as insurance and taxes
109 for property subject to a residential mortgage loan; and

110 ~~(o)~~ (p) “Subordinate mortgage loan” means any loan or
111 consumer credit sale primarily for personal, family or household
112 use that is secured by a mortgage, deed of trust or other equiva-

113 lent consensual security interest on a dwelling as defined in
114 Section 103(w) of the Truth in Lending Act or residential real
115 estate upon which is constructed or intended to be constructed a
116 dwelling and is subject to the lien of one or more prior recorded
117 mortgages or deeds of trust.

**§31-17-8. Maximum interest rate on subordinate loans; prepay-
ment 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 connec-
2 tion with any subordinate mortgage loan may not exceed
3 eighteen percent per year on the unpaid balance of the amount
4 financed.

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

10 (c) Except as provided by section one hundred nine, article
11 three, chapter forty-six-a of this code and by subsection (g) of
12 this section, no additional charges may be made, nor may any

13 charge permitted by this section be assessed unless the loan is
14 made: *Provided*, That in the event the loan is not made, the
15 licensee is not required to refund an appraisal fee that is col-
16 lected from a loan applicant by the licensee and paid to an
17 unrelated third-party appraiser unless the fee is required to be
18 refunded pursuant to federal law.

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

33 U. S. C. §1735f-7a, the state law limitations contained in this
34 section shall apply.

35 (e) Notwithstanding other provisions of this section, a
36 delinquent charge or late charge may be charged on any install-
37 ment made ten or more days after the regularly scheduled due
38 date in accordance with section one hundred twelve or one
39 hundred thirteen, article three, chapter forty-six-a of this code,
40 whichever is applicable. The charge may be made only once on
41 any one installment during the term of the primary or subordi-
42 nate mortgage loan.

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

50 (g) Except for fees for services provided by unrelated third
51 parties for appraisals, inspections, title searches and credit
52 reports, no application fee may be allowed whether or not the

53 mortgage loan is consummated; however, the borrower may be
54 required to reimburse the licensee for actual expenses incurred
55 by the licensee in a purchase money transaction after acceptance
56 and approval of a mortgage loan proposal made in accordance
57 with the provisions of this article which is not consummated
58 because of:

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

60 (2) The borrower's false or fraudulent representation of a
61 material fact which prevents closing of the loan as proposed.

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

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

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

- 73 (1) Any power of attorney to confess judgment;
- 74 (2) Any provision whereby the borrower waives any rights
75 accruing to him or her under the provisions of this article;
- 76 (3) Any requirement that more than one installment be
77 payable in any one installment period, or that the amount of any
78 installment be greater or less than that of any other installment,
79 except for the final installment which may be in a lesser amount,
80 or unless the loan is structured as a revolving line of credit
81 having no set final payment date: Provided, That this prohibition
82 does not apply to any mortgage modification or refinancing loan
83 made during the effective dates of and in participation and
84 compliance with the federal Homes Affordable Modification
85 Program, a part of the federal Making Home Affordable Modifi-
86 cation Program or any other mortgage modification or refinanc-
87 ing loan funded through any other federal or state program or
88 litigation settlement;
- 89 (4) Any assignment of or order for the payment of any
90 salary, wages, commissions or other compensation for services,
91 or any part thereof, earned or to be earned;

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

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

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

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

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

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

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

129 (3) Make or assist in making any primary or subordinate
130 mortgage loan with the intent that the loan will not be repaid and

131 that the lender will obtain title to the property through foreclo-
132 sure: *Provided*, That this subdivision shall not apply to reverse
133 mortgages obtained under the provisions of article twenty-four,
134 chapter forty-seven of this code;

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

151 permissible and, where included as part of the finance charge,
152 does not constitute charging interest on interest. To the extent
153 that this section overrides the preemption on limiting points and
154 other charges on first lien residential mortgage loans contained
155 in the United States Depository Institutions Deregulation and
156 Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state
157 law limitations contained in this section apply;

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

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

164 (7) Require terms of repayment which do not result in
165 continuous monthly reduction of the original principal amount
166 of the loan: *Provided*, That the provisions of this subdivision
167 may not apply to reverse mortgage loans obtained under article
168 twenty-four, chapter forty-seven of this code, home equity, open-
169 end lines of credit, bridge loans used in connection with the
170 purchase or construction of a new residential dwelling or

171 commercial loans for multiple residential purchases; and,
172 Provided, however, That this prohibition does not apply to any
173 mortgage modification or refinancing loan made during the
174 effective dates of and in participation and compliance with the
175 federal Homes Affordable Modification Program, a part of the
176 federal Making Home Affordable Modification Program or any
177 other mortgage modification or refinancing loan funded through
178 any other federal or state program or litigation settlement;

179 (8) Secure a primary or subordinate mortgage loan in a
180 principal amount that, when added to the aggregate total of the
181 outstanding principal balances of all other primary or subordi-
182 nate mortgage loans secured by the same property, exceeds the
183 fair market value of the property on the date that the latest
184 mortgage loan is made. For purposes of this paragraph, a broker
185 or lender may rely upon a bona fide written appraisal of the
186 property made by an independent third-party appraiser, duly
187 licensed or certified by the West Virginia Real Estate Appraiser
188 Licensing and Certification Board and prepared in compliance
189 with the uniform standards of professional appraisal practice:
190 *Provided, That commencing January 1, 2012, and continuing*

191 ~~until January 1, 2015,~~ this prohibition does not apply to any
192 mortgage modification or refinancing loan made during the
193 effective dates and in participation ~~with~~ and ~~in~~ compliance with
194 the federal Homes Affordable Modification Program, a part of
195 the federal Making Home Affordable program, or any other
196 mortgage modification or refinancing loan funded through any
197 other federal or state program or litigation settlement;

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

201 (10) Knowingly violate any provision of any other applica-
202 ble state or federal law regulating primary or subordinate
203 mortgage loans, including, without limitation, chapter forty-six-a
204 of this code.

