

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2223

2015 Carryover

(BY DELEGATES WALTERS AND FRICH)

[Introduced January 13, 2016; referred to the
Committee on Banking and Insurance then Finance.]

1 A BILL to amend and reenact §31-17-1 and §31-17-8 of the Code of West Virginia, 1931, as
 2 amended, all relating to including consumer credit sales that are secured by a mortgage,
 3 deed of trust or other equivalent consensual security interest on a dwelling or residential
 4 real estate in the definitions of "primary mortgage loan" and "subordinate mortgage loan";
 5 and providing an exception to the prohibition of balloon payments and further extending
 6 the exception to the ban on loans greater than one hundred percent LTV for loan
 7 modifications or refinancing loans done through and in compliance with government
 8 programs or litigation settlements.

Be it enacted by the Legislature of West Virginia:

1 That §31-17-1 and §31-17-8 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted, all 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 out of the making or
 3 acceptance of a primary or subordinate mortgage loan, except finance charges, including, but not
 4 limited to, official fees and taxes, reasonable closing costs and certain documentary charges and
 5 insurance premiums and other charges which definition is to be read in conjunction with and
 6 permitted by section one hundred nine, article three, chapter forty-six-a of this code;

7 (b) "Affiliated" means persons under the same ownership or management control. As to
 8 corporations, limited liability companies or partnerships, where common owners manage or
 9 control a majority of the stock, membership interests or general partnership interests of one or
 10 more such corporations, limited liability companies or partnerships, those persons are considered

11 affiliated. In addition, persons under the ownership or management control of the members of
12 an immediate family shall be considered affiliated. For purposes of this section, "immediate
13 family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother,
14 spouse, child and grandchildren;

15 (c) "Amount financed" means the total of the following items to the extent that payment is
16 deferred:

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

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

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

22 (A) Any applicable sales, use, privilege, excise or documentary stamp taxes;

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

25 (C) Additional charges permitted by this article;

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

27 (e) "Broker" means any person acting in the regular course of business who, for a fee or
28 commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange,
29 or originates or assigns a primary or subordinate mortgage loan between a lender and a borrower.

30 A person is considered to be acting in the regular course of business if he or she negotiates or
31 arranges, or offers to negotiate or arrange, or originates, processes or assigns any primary or
32 subordinate mortgage loans in any one calendar year; or if he or she seeks to charge a borrower
33 or receive from a borrower money or other valuable consideration in any primary or subordinate
34 mortgage transaction before completing performance of all broker services that he or she has

35 agreed to perform for the borrower;

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

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

39 (h) "Finance charge" means the sum of all interest and similar charges payable directly or
40 indirectly by the debtor imposed or collected by the lender incident to the extension of credit as
41 coextensive with the definition of "loan finance charge" set forth in section one hundred two, article
42 one, chapter forty-six-a of this code;

43 (i) "Lender" means any person who makes or offers to make or accepts or offers to accept
44 or purchases or services any primary or subordinate mortgage loan in the regular course of
45 business. A person is considered to be acting in the regular course of business if he or she
46 makes or accepts, or offers to make or accept, any primary or subordinate mortgage loans in any
47 one calendar year.

48 "Lender" does not include any person who does not currently have and has never held a
49 residential mortgage lender license in this or in any other state and who makes no more than
50 three primary or subordinate mortgage loans in any calendar year to purchasers of any dwelling
51 owned by that person: *Provided*, That the person is required to report within thirty days of the date
52 of the loan any such mortgage loan to the Division of Financial Institutions on a form available
53 from the division upon request. Failure to timely report as required by this subsection may result
54 in imposition by the commissioner of a civil administrative penalty of up to \$250;

55 (j) "Licensee" means any person duly licensed by the commissioner under the provisions
56 of this article or article seventeen-a of this chapter as a lender, broker or mortgage loan originator;

57 (k) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing
58 system developed and maintained by the Conference of State Bank Supervisors and the

59 American Association of Residential Mortgage Regulators for the licensing and registration of
60 licensed mortgage brokers and lenders licensed under this article and mortgage loan originators
61 licensed under article seventeen-a of this chapter;

62 (l) "Person" means an individual, partnership, association, trust, corporation or any other
63 legal entity, or any combination thereof;

64 (m) "Primary mortgage loan" means any loan or consumer credit sale primarily for
65 personal, family or household use that is secured by a mortgage, deed of trust or other equivalent
66 consensual security interest on a dwelling as defined in Section 103(w) of the Truth in Lending
67 Act or residential real estate upon which is constructed or intended to be constructed a dwelling;

68 (n) "Servicing" or "servicing a residential mortgage loan" means through any medium or
69 mode of communication the collection or remittance for, or the right or obligation to collect or remit
70 for another lender, note owner or noteholder, payments of principal, interest, including sales
71 finance charges in a consumer credit sale, and escrow items as insurance and taxes for property
72 subject to a residential mortgage loan; and

73 (o) "Subordinate mortgage loan" means any loan or consumer credit sale primarily for
74 personal, family or household use that is secured by a mortgage, deed of trust or other equivalent
75 consensual security interest on a dwelling as defined in Section 103(w) of the Truth in Lending
76 Act or residential real estate upon which is constructed or intended to be constructed a dwelling
77 and is subject to the lien of one or more prior recorded mortgages or deeds of trust.

§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 connection with any subordinate
2 mortgage loan may not exceed eighteen percent per year on the unpaid balance of the amount

3 financed.

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

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

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

24 (e) Notwithstanding other provisions of this section, a delinquent charge or late charge
25 may be charged on any installment made ten or more days after the regularly scheduled due date
26 in accordance with section one hundred twelve or one hundred thirteen, article three, chapter

27 forty-six-a of this code, whichever is applicable. The charge may be made only once on any one
28 installment during the term of the primary or subordinate mortgage loan.

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

34 (g) Except for fees for services provided by unrelated third parties for appraisals,
35 inspections, title searches and credit reports, no application fee may be allowed whether or not
36 the mortgage loan is consummated; however, the borrower may be required to reimburse the
37 licensee for actual expenses incurred by the licensee in a purchase money transaction after
38 acceptance and approval of a mortgage loan proposal made in accordance with the provisions of
39 this article which is not consummated because of:

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

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

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

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

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

- 51 (1) Any power of attorney to confess judgment;
- 52 (2) Any provision whereby the borrower waives any rights accruing to him or her under the
53 provisions of this article;
- 54 (3) Any requirement that more than one installment be payable in any one installment
55 period, or that the amount of any installment be greater or less than that of any other installment,
56 except for the final installment which may be in a lesser amount, or unless the loan is structured
57 as a revolving line of credit having no set final payment date: Provided, That this prohibition
58 does not apply to any mortgage modification or refinancing loan made during the effective dates
59 of and in participation and compliance with the federal Homes Affordable Modification Program,
60 a part of the federal Making Home Affordable Modification Program or any other mortgage
61 modification or refinancing loan funded through any other federal or state program or litigation
62 settlement;
- 63 (4) Any assignment of or order for the payment of any salary, wages, commissions or
64 other compensation for services, or any part thereof, earned or to be earned;
- 65 (5) A requirement for compulsory arbitration which does not comply with federal law; or
- 66 (6) Blank or blanks to be filled in after the consummation of the loan. A borrower must
67 be given a copy of every signed document executed by the borrower at the time of closing.
- 68 (k) No licensee shall charge a borrower or receive from a borrower money or other
69 valuable consideration as compensation before completing performance of all services the
70 licensee has agreed to perform for the borrower unless the licensee also registers and complies
71 with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of
72 this code, including all additional bonding requirements as may be established therein.
- 73 (l) No licensee shall make or broker revolving loans secured by a primary or subordinate
74 mortgage lien for the retail purchase of consumer goods and services by use of a lender credit

75 card.

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

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

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

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

94 (4) Require the borrower to pay, in addition to any periodic interest, combined fees,
95 compensation or points of any kind to the lender and broker to arrange, originate, evaluate,
96 maintain or service a loan secured by any encumbrance on residential property that exceed, in
97 the aggregate, six percent of the loan amount financed, including any yield spread premium paid
98 by the lender to the broker: *Provided*, That reasonable closing costs, as defined in section one

99 hundred two, article one, chapter forty-six-a of this code, payable to unrelated third parties may
100 not be included within this limitation: *Provided, however,* That no yield spread premium is
101 permitted for any loan for which the annual percentage rate exceeds eighteen percent per year
102 on the unpaid balance of the amount financed: *Provided further,* That if no yield spread premium
103 is charged, the aggregate of fees, compensation or points can be no greater than five percent of
104 the loan amount financed. The financing of the fees and points are permissible and, where
105 included as part of the finance charge, does not constitute charging interest on interest. To the
106 extent that this section overrides the preemption on limiting points and other charges on first lien
107 residential mortgage loans contained in the United States Depository Institutions Deregulation
108 and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in
109 this section apply;

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

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

114 (7) Require terms of repayment which do not result in continuous monthly reduction of the
115 original principal amount of the loan: *Provided,* That the provisions of this subdivision may not
116 apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this
117 code, home equity, open-end lines of credit, bridge loans used in connection with the purchase
118 or construction of a new residential dwelling or commercial loans for multiple residential
119 purchases; and, *Provided, however,* That this prohibition does not apply to any mortgage
120 modification or refinancing loan made during the effective dates of and in participation and
121 compliance with the federal Homes Affordable Modification Program, a part of the federal Making
122 Home Affordable Modification Program or any other mortgage modification or refinancing loan

123 funded through any other federal or state program or litigation settlement;

124 (8) Secure a primary or subordinate mortgage loan in a principal amount that, when added
125 to the aggregate total of the outstanding principal balances of all other primary or subordinate
126 mortgage loans secured by the same property, exceeds the fair market value of the property on
127 the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or
128 lender may rely upon a bona fide written appraisal of the property made by an independent third-
129 party appraiser, duly licensed or certified by the West Virginia Real Estate Appraiser Licensing
130 and Certification Board and prepared in compliance with the uniform standards of professional
131 appraisal practice: *Provided*, That commencing January 1, 2012, and continuing until January
132 1, 2015, this prohibition does not apply to any mortgage modification or refinancing loan made in
133 participation with and in compliance with the federal Homes Affordable Modification Program, a
134 part of the federal Making Home Affordable program, or any other mortgage modification or
135 refinancing loan funded through any other federal or state program or litigation settlement;

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

138 (10) Knowingly violate any provision of any other applicable state or federal law regulating
139 primary or subordinate mortgage loans, including, without limitation, chapter forty-six-a of this
140 code.

NOTE: The purpose of this bill is to include consumer credit sales that are secured by a mortgage, deed of trust or other security interest on a dwelling or residential real estate in the definitions of "primary mortgage loan" and "subordinate mortgage loan"; and to extend the prohibition on loans greater than one hundred percent LTV for loan modifications done through government programs to coincide with the termination of the government funded

programs and apply the same exception to loans with balloon payments.

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