

HB 4285

2010 APR -1 PM 4: 25

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WEST VIRGINIA LEGISLATURE  
STATE HOUSE  
CHARLESTON, WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2010



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4285**

(By Delegates Moore, Walters, Reynolds  
and Azinger)



Passed March 12, 2010

In Effect Ninety Days From Passage

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 4285

(BY DELEGATES MOORE, WALTERS,  
REYNOLDS AND AZINGER)

[Passed March 12, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §31-17-4 of the Code of West Virginia, 1931, as amended, and to amend and reenact §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-6, §31-17A-9, §31-17A-12 and §31-17A-13 of said code, all relating to the licensing of residential mortgage brokers, lenders and loan originators by the Division of Banking; definitions; allowing the Commissioner of Banking to reduce or waive application fees, bond amounts and net worth requirements of bona-fide nonprofit business entities, including community housing development organizations; providing that mortgage loan originators may be employed by or under contract with only one mortgage broker or lender at any time; allowing the commissioner to reduce or waive the application fees for mortgage loan originators employed by bona fide nonprofit organizations or other community housing development organizations; providing that a mortgage loan originator license may not be transferred or assigned and that a mortgage loan originator changing employers must provide thirty days prior notice to the commissioner and pay a fee of \$50; increasing the

2010 APR -1 PM 4: 25

COMMISSIONER OF BANKING  
WEST VIRGINIA  
SECRETARY OF STATE

amount of prelicensing education required for loan originators from twenty to twenty-two hours; providing that prelicensing education courses and requirements and continuing education courses for mortgage loan originators may be approved by the division of banking; providing a procedure for the commissioner to follow whenever taking an enforcement action under article seventeen-a of this code; allowing any person not licensed as a mortgage lender or broker under article seventeen of chapter thirty-one of this code or article four of chapter forty-six-a of this code to register with the Nationwide Mortgage Licensing System and Registry and provide a surety bond in the appropriate amount for any mortgage loan originators it employs; and allowing the commissioner to reduce or waive the bond amounts imposed by article seventeen-a for mortgage loan originators employed by bona fide nonprofit corporations or other bona fide nonprofit business entities, including community housing development organizations, if the commissioner determines that such action would not violate any applicable law.

*Be it enacted by the Legislature of West Virginia:*

That §31-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-6, §31-17A-9, §31-17A-12 and §31-17A-13, of said code be amended and reenacted, all to read as follows:

**ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE  
LENDER, BROKER AND SERVICER ACT.**

**§31-17-4. Applications for licenses; requirements; bonds; fees;  
renewals; waivers and reductions; per loan fee.**

- 1 (a) In connection with an application for licensing as a
- 2 mortgage lender or mortgage broker, the applicant shall, at a
- 3 minimum, furnish to the Nationwide Mortgage Licensing

4 System and Registry information concerning the applicant's  
5 identity, including:

6 (1) Fingerprints for submission to the Federal Bureau of  
7 Investigation and any governmental agency or entity  
8 authorized to receive such information for a state, national  
9 and international criminal history background check; and

10 (2) Personal history and experience in a form prescribed  
11 by the Nationwide Mortgage Licensing System and Registry  
12 and the commissioner, including the submission of  
13 authorization for the Nationwide Mortgage Licensing System  
14 and Registry and the commissioner to obtain:

15 (A) An independent credit report obtained from a  
16 consumer reporting agency described in Section 603(p) of the  
17 Fair Credit Reporting Act; and

18 (B) Information related to any administrative, civil or  
19 criminal findings by any governmental jurisdiction.

20 (b) In order to reduce the points of contact which the  
21 Federal Bureau of Investigation may have to maintain for  
22 purposes of this article, the commissioner may use the  
23 Nationwide Mortgage Licensing System and Registry or its  
24 designated vendor as a channeling agent for requesting  
25 information from and distributing information to the  
26 Department of Justice or any governmental agency.

27 (c) In order to reduce the points of contact which the  
28 commissioner may have to maintain, for purposes of this  
29 article, the commissioner may use the Nationwide Mortgage  
30 Licensing System and Registry as a channeling agent for  
31 requesting and distributing information to and from any  
32 source so directed by the commissioner.

33 (d) Application for a lender's or broker's license shall  
34 each year be submitted under oath, in the form prescribed by  
35 the commissioner, and shall contain the full name and  
36 address of the applicant and, if the applicant is a partnership,  
37 limited liability company or association, of every member  
38 thereof, and, if a corporation, of each officer, director and  
39 owner of ten percent or more of the capital stock thereof and  
40 further information as the commissioner may reasonably  
41 require. Background and credit checks shall be conducted in  
42 accordance with this section for any officer, director or  
43 owner, directly or indirectly, of ten percent or more of the  
44 capital stock of a corporation or any member of a limited  
45 liability or partnership with, directly or indirectly, a ten  
46 percent or greater ownership interest. Any application shall  
47 also disclose the location at which the business of lender or  
48 broker is to be conducted.

49 (e) At the time of making application for a lender's  
50 license, the applicant therefor shall:

51 (1) If a foreign corporation, submit a certificate from the  
52 Secretary of State certifying that the applicant is registered  
53 with the Secretary of State to transact business in this state;

54 (2) Submit proof that he or she has available for the  
55 operation of the business at the location specified in the  
56 application net worth of at least \$250,000;

57 (3) File with the commissioner a bond in favor of the  
58 state for the benefit of consumers or for a claim by the  
59 commissioner for an unpaid civil administrative penalty or an  
60 unpaid examination invoice in the amount of \$100,000 for  
61 licensees with West Virginia annual loan originations of \$0  
62 to \$3 million, \$150,000 for West Virginia annual loan  
63 originations greater than \$3 million and up to \$10 million,  
64 and \$250,000 for West Virginia annual loan originations over

65 \$10 million in a form and with conditions as the  
66 commissioner may prescribe and executed by a surety  
67 company authorized to do business in this state: *Provided,*  
68 That lender licensees who service West Virginia mortgage  
69 loans shall file with the commissioner a bond under the same  
70 conditions listed above in the amount of \$200,000;

71 (4) Pay to the commissioner a license fee of \$1,250 plus  
72 the actual cost of fingerprint processing and the processing  
73 fees assessed by the Nationwide Mortgage Licensing System  
74 and Registry. If the commissioner shall determine that an  
75 investigation outside this state is required to ascertain facts or  
76 information relative to the applicant or information set forth  
77 in the application, the applicant may be required to advance  
78 sufficient funds to pay the estimated cost of the investigation.  
79 An itemized statement of the actual cost of the investigation  
80 outside this state shall be furnished to the applicant by the  
81 commissioner and the applicant shall pay or shall have  
82 returned to him or her, as the case may be, the difference  
83 between his or her payment in advance of the estimated cost  
84 and the actual cost of the investigation; and

85 (5) Submit a full and complete disclosure of any litigation  
86 or unresolved complaint filed by a governmental authority or  
87 class action lawsuit on behalf of consumers relating to the  
88 operation of the license applicant.

89 (f) At the time of making application for a broker's  
90 license, the applicant therefor shall:

91 (1) If a foreign corporation, submit a certificate from the  
92 Secretary of State certifying that the applicant is registered  
93 with the Secretary of State to transact business in this state;

94 (2) Submit proof that he or she has available for the  
95 operation of the business at the location specified in the  
96 application net worth of at least \$10,000;

97 (3) File with the commissioner a bond in favor of the  
98 state for the benefit of consumers or for a claim by the  
99 commissioner for an unpaid civil administrative penalty or an  
100 unpaid examination invoice in the amount of \$50,000 for  
101 licensees with West Virginia loan originations of \$0 to \$3  
102 million, \$75,000 for West Virginia loan originations greater  
103 than \$3 million and up to \$10 million, and \$100,000 for West  
104 Virginia loan originations over \$10 million in a form and  
105 with conditions as the commissioner may prescribe and  
106 executed by a surety company authorized to do business in  
107 this state: *Provided*, That the bond must be in the amount of  
108 \$150,000 before a broker may participate in a table-funded  
109 residential mortgage loan;

110 (4) Pay to the commissioner a license fee of \$350 plus the  
111 actual cost of fingerprint processing and the processing fees  
112 assessed by the Nationwide Mortgage Licensing System and  
113 Registry; and

114 (5) Submit a full and complete disclosure of any litigation  
115 or unresolved complaint filed by a governmental authority or  
116 class action lawsuit on behalf of consumers relating to the  
117 operation of the license applicant.

118 (g) The aggregate liability of the surety on any bond  
119 given pursuant to the provisions of this section shall in no  
120 event exceed the amount of the bond.

121 (h) Nonresident lenders and brokers licensed under this  
122 article by their acceptance of the license acknowledge that  
123 they are subject to the jurisdiction of the courts of West  
124 Virginia and the service of process pursuant to section one  
125 hundred thirty-seven, article two, chapter forty-six-a of this  
126 code and section thirty-three, article three, chapter fifty-six of  
127 this code.

128 (i) The commissioner may elect to reduce or waive the  
129 application fees, bond amounts and net worth requirements  
130 imposed by this section for bona fide nonprofit corporations  
131 or other bona fide nonprofit business entities, including  
132 community housing development organizations, whose  
133 residential mortgage lending or brokering activities provide  
134 housing primarily to households or persons below the HUD-  
135 established median income for their area of residence. Any  
136 waiver of fees or other costs under this paragraph shall not be  
137 construed as a waiver of the duty to comply with all other  
138 provisions of this article.

139 (j) Every broker and lender licensee shall pay a fee of \$5  
140 for each residential mortgage loan originated, made or  
141 brokered in a calendar year. This fee shall be paid annually  
142 for the benefit of the Division of Banking and remitted with  
143 the report required pursuant to subsection (b), section eleven  
144 of this article for loans made, brokered or originated during  
145 the previous calendar year. If a licensee ceases operation, it  
146 shall remit any fees due since the last reporting period when  
147 it relinquishes its license.

148 (k) If a claim for a consumer restitution is pending on a  
149 bond required pursuant to this section when the  
150 commissioner makes a claim for a civil administrative  
151 penalty or an unpaid examination invoice, the consumer  
152 claim shall be resolved before any payments may be made for  
153 an unpaid penalty or examination invoice.

## **ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.**

### **§31-17A-2. Definitions.**

1 As used in this article:



2 (a) "Commissioner" means the Commissioner of Banking  
3 of this state;

4 (b) "Depository institution" has the same meaning as in  
5 section three of the Federal Deposit Insurance Act and  
6 includes any federally insured credit union; and,

7 (c) "Division" means the West Virginia Division of  
8 Banking;

9 (d) "Federal banking agencies" means the board of  
10 Governors of the Federal Reserve System, the Comptroller of  
11 the Currency, the Director of the Office of Thrift  
12 Supervision, the National Credit Union Administration and  
13 the Federal Deposit Insurance Corporation;

14 (e) "Immediate family member" means a spouse, child,  
15 sibling, parent, grandparent or grandchild. This includes  
16 stepparents, stepchildren, stepsiblings and adoptive  
17 relationships;

18 (f) "Individual" means a natural person; and,

19 (g) "Loan processor or underwriter" means an individual  
20 who performs clerical or support duties as an employee at the  
21 direction of and subject to the supervision and instruction of  
22 a person licensed or exempt from licensing under article  
23 seventeen of this chapter.

24 (1) For purposes of this paragraph, "clerical or support  
25 duties" may include subsequent to the receipt of an  
26 application:

27 (A) The receipt, collection, distribution and analysis of  
28 information common for the processing or underwriting of a  
29 residential mortgage loan; and,

30 (B) communicating with a consumer to obtain the  
31 information necessary for the processing or underwriting of  
32 a loan, to the extent that such communication does not  
33 include offering or negotiating loan rates or terms, or  
34 counseling consumers about residential mortgage loan rates  
35 or terms; or

36 (2) An individual engaging solely in loan processor or  
37 underwriter activities shall not represent to the public,  
38 through advertising or other means of communicating or  
39 providing information, including the use of business cards,  
40 stationery, brochures, signs, rate lists or other promotional  
41 items, that such individual can or will perform any of the  
42 activities of a mortgage loan originator;

43 (h) “Mortgage loan originator” means an individual who  
44 for compensation or gain or in the expectation of  
45 compensation or gain takes a residential mortgage loan  
46 application or offers or negotiates terms of a residential  
47 mortgage loan and is sponsored by a mortgage lender, broker  
48 or regulated consumer lender licensed by the Division of  
49 Banking.

50 “Mortgage loan originator” does not include:

51 (1) An individual engaged solely as a loan processor or  
52 underwriter except as otherwise provided in section three of  
53 this article;

54 (2) A person or entity that only performs real estate  
55 brokerage activities and is licensed or registered in  
56 accordance with West Virginia law, unless the person or  
57 entity is compensated by a lender, a mortgage broker or other  
58 mortgage loan originator or by any agent of such lender,  
59 mortgage broker or other mortgage loan originator;

60 (3) A person or entity solely involved in extensions of  
61 credit relating to timeshare plans, as that term is defined in  
62 Section 101(53D) of Title 11, United States Code; or

63 (4) A manufactured or modular home retailer employee  
64 who performs purely administrative or clerical tasks and who  
65 receives only the customary salary or commission from the  
66 employer in connection with the sales transaction;

67 (i) "Real estate brokerage activity" means any activity  
68 that involves offering or providing real estate brokerage  
69 services to the public, including:

70 (1) Acting as a real estate salesperson or real estate  
71 broker for a buyer, seller, lessor or lessee of real property;

72 (2) Bringing together parties interested in the sale,  
73 purchase, lease, rental or exchange of real property;

74 (3) Negotiating, on behalf of any party, any portion of a  
75 contract relating to the sale, purchase, lease, rental or  
76 exchange of real property other than in connection with  
77 providing financing with respect to any such transaction;

78 (4) Engaging in any activity for which a person engaged  
79 in the activity is required to be registered or licensed as a real  
80 estate agent or real estate broker under any applicable law;  
81 and

82 (5) Offering to engage in any activity, or act in any  
83 capacity, described in subsection (1), (2), (3) or (4) of this  
84 section;

85 (j) "Nationwide Mortgage Licensing System and  
86 Registry" means a mortgage licensing system developed and  
87 maintained by the Conference of State Bank Supervisors and

88 the American Association of Residential Mortgage Regulators  
89 for the licensing and registration of mortgage brokers and  
90 lenders licensed pursuant to article seventeen of this chapter  
91 and mortgage loan originators licensed pursuant to this  
92 article;

93 (k) “Nontraditional mortgage product” means any  
94 mortgage product other than a fixed rate mortgage;

95 (l) “Person” means a natural person, corporation, company,  
96 limited liability company, partnership or association;

97 (m) “Registered mortgage loan originator” means any  
98 individual who:

99 (1) Meets the definition of mortgage loan originator and  
100 is an employee of:

101 (A) A depository institution;

102 (B) A subsidiary that is:

103 (i) Owned and controlled by a depository institution; and

104 (ii) Regulated by a federal banking agency; or

105 (C) An institution regulated by the Farm Credit  
106 Administration; and

107 (2) Is registered with, and maintains a unique identifier  
108 through, the Nationwide Mortgage Licensing System and  
109 Registry;

110 (n) “Residential mortgage loan” means any loan  
111 primarily for personal, family or household use that is  
112 secured by a mortgage, deed of trust or other equivalent

113 consensual security interest on a dwelling as defined in  
114 Section 103(v) of the Truth in Lending Act or residential real  
115 estate upon which is constructed or intended to be  
116 constructed a dwelling;

117 (o) “Residential real estate” means any real property  
118 located in West Virginia, upon which is constructed or  
119 intended to be constructed a dwelling; and

120 (p) “Unique identifier” means a number or other  
121 identifier assigned by protocols established by the  
122 Nationwide Mortgage Licensing System and Registry.

**§31-17A-3. License and registration required.**

1 (a) An individual, unless specifically exempted under  
2 subsection (c) of this section, shall not engage in the business  
3 of a mortgage loan originator with respect to any dwelling  
4 located in this state without first obtaining and maintaining  
5 annually a license under this article. Each licensed mortgage  
6 loan originator must register with and maintain a valid unique  
7 identifier issued by the Nationwide Mortgage Licensing  
8 System and Registry. A Mortgage loan originator licensed  
9 under this article may be employed by, or under contract to  
10 provide mortgage loan originator services for, only one entity  
11 licensed or exempt from licensing under article seventeen of  
12 this chapter at any time.

13 (b) To facilitate an orderly transition to licensing and  
14 minimize disruption in the mortgage marketplace, the  
15 effective date for subsection (a) of this section:

16 (1) For all individuals other than individuals described in  
17 subdivision (2) of this subsection shall be January 31, 2010;  
18 and

19 (2) For all individuals licensed as mortgage loan  
20 originators before July 1, 2009, shall be January 1, 2011.

21 (c) The following are exempt from this article:

22 (1) Registered Mortgage Loan Originators, when acting  
23 for an entity described in subdivision (11), section two of this  
24 article;

25 (2) Any individual who offers or negotiates terms of a  
26 residential mortgage loan with or on behalf of an immediate  
27 family member of the individual;

28 (3) Any individual who offers or negotiates terms of a  
29 residential mortgage loan secured by a dwelling that served  
30 as the individual's residence; and

31 (4) A licensed attorney who negotiates the terms of a  
32 residential mortgage loan on behalf of a client as an ancillary  
33 matter to the attorney's representation of the client, unless the  
34 attorney is compensated by a lender, a mortgage broker or  
35 other mortgage loan originator or by any agent of such  
36 lender, mortgage broker or other mortgage loan originator.

37 (d) A loan processor or underwriter who is an  
38 independent contractor may not engage in the activities of a  
39 loan processor or underwriter unless such independent  
40 contractor loan processor or underwriter obtains and  
41 maintains a license under subsection (a) of this section. Each  
42 independent contractor loan processor or underwriter licensed  
43 as a mortgage loan originator must have and maintain a valid  
44 unique identifier issued by the Nationwide Mortgage  
45 Licensing System and Registry.

46 (e) To implement an orderly and efficient licensing and  
47 transition process, the commissioner may establish interim

48 policies and procedures for licensing and acceptance of  
49 applications as follows:

50 (1) Mortgage loan originators employed by or under  
51 exclusive contract to licensed mortgage brokers after the  
52 effective date of this article shall submit an application on a  
53 form prescribed by the commissioner, including all necessary  
54 information, fees and authorizations for investigation as the  
55 commissioner may determine necessary, and must meet the  
56 standards for licensure set forth in this article. Any license  
57 issued under this subdivision and any license current as of the  
58 effective date of this article will expire on December 31,  
59 2010: *Provided*, That notwithstanding the licensing  
60 requirements under this section, an individual acting  
61 exclusively as an employee of a servicer who is engaging in  
62 loss mitigation efforts with respect to an existing mortgage  
63 transaction serviced by his or her employer is not required to  
64 meet the education, testing, background and licensing  
65 standards of this article until July 1, 2011, to the extent that  
66 this extension of time is not denied by guideline, rule,  
67 regulation or interpretive letter issued by the United States  
68 Department of Housing and Urban Development. In the  
69 event this extension of time is denied, such individuals shall  
70 apply for a license under this section within ninety days of  
71 the denial; and

72 (2) Mortgage loan originators employed by or under  
73 exclusive contract to licensed mortgage lenders and regulated  
74 consumer lenders shall comply with this article and submit  
75 all applications through the Nationwide Mortgage Licensing  
76 System and Registry on or before January 31, 2010.

**§31-17A-4. State license application and issuance.**

1 (a) Applicants for a license must apply in a form as  
2 prescribed by the commissioner. Each form shall contain

3 content as set forth by instruction or procedure of the  
4 commissioner and may be changed or updated as necessary  
5 by the commissioner in order to carry out the purposes of this  
6 article. The application must be submitted with an  
7 application fee of \$50 plus the actual cost of fingerprint  
8 processing, together with any processing fee assessed by the  
9 Nationwide Mortgage Licensing System and Registry. The  
10 commissioner may elect to reduce or waive the application  
11 fees for mortgage loan originators employed by bona fide  
12 nonprofit organizations or other community housing  
13 development organizations that serve the housing needs of  
14 households or persons below the HUD-established median  
15 income for their area of residence. Any waiver of fees or  
16 other costs under this paragraph shall not be construed as a  
17 waiver of the duty to comply with all other provisions of this  
18 article.

19 (b) The commissioner is authorized to establish  
20 relationships or contracts with the Nationwide Mortgage  
21 Licensing System and Registry or other entities designated by  
22 the Nationwide Mortgage Licensing System and Registry to  
23 collect and maintain records and process transaction fees or  
24 other fees related to licensees or other persons subject to this  
25 article.

26 (c) In connection with an application for licensing as a  
27 mortgage loan originator, the applicant shall, at a minimum,  
28 furnish to the Nationwide Mortgage Licensing System and  
29 Registry information concerning the applicant's identity,  
30 including:

31 (1) Fingerprints for submission to the Federal Bureau of  
32 Investigation and any governmental agency or entity  
33 authorized to receive such information for a state, national  
34 and international criminal history background check; and



35 (2) Personal history and experience in a form prescribed  
36 by the Nationwide Mortgage Licensing System and Registry  
37 and the commissioner, including the submission of  
38 authorization for the Nationwide Mortgage Licensing System  
39 and Registry and the commissioner to obtain:

40 (A) An independent credit report obtained from a  
41 consumer reporting agency described in Section 603(p) of the  
42 Fair Credit Reporting Act; and

43 (B) Information related to any administrative, civil or  
44 criminal findings by any governmental jurisdiction.

45 (d) To reduce the points of contact which the Federal  
46 Bureau of Investigation may have to maintain, the  
47 commissioner may use the Nationwide Mortgage Licensing  
48 System and Registry or its designated vendor as a channeling  
49 agent for requesting information from and distributing  
50 information to the Department of Justice or any governmental  
51 agency.

52 (e) To reduce the points of contact which the  
53 commissioner may have to maintain, the commissioner may  
54 use the Nationwide Mortgage Licensing System and Registry  
55 as a channeling agent for requesting and distributing  
56 information to and from any source so directed by the  
57 commissioner.

58 (f) Nonresident mortgage loan originators licensed under  
59 this article by their acceptance of the license acknowledge  
60 that they are subject to the jurisdiction of the courts of West  
61 Virginia and the service of process pursuant to section one  
62 hundred thirty-seven, article two, chapter forty-six-a of this  
63 code and section thirty-three, article three, chapter fifty-six of  
64 this code.

65 (g) The Commissioner may grant a provisional license to  
66 a mortgage loan originator who has met all other  
67 requirements for licensing under this article but: (1) has not  
68 passed a test regarding West Virginia mortgage laws and  
69 regulations required for licensure: *Provided*, That the  
70 provisionally licensed mortgage loan originator takes and  
71 passes that test within sixty days of the test becoming  
72 available; or (2) for whom the Commissioner has not  
73 received the results of a criminal background check despite  
74 the good faith effort of the applicant to provide in a timely  
75 manner the information necessary to obtain a criminal  
76 background check.

**§31-17A-6. Prelicensing and relicensing education of loan  
originators.**

1 (a) To meet the prelicensing education requirement, a  
2 person must complete at least twenty-two hours of education  
3 approved in accordance with subsection (b) of this section,  
4 which shall include at least:

5 (1) Three hours of federal law and regulations;

6 (2) Three hours of ethics, which shall include instruction  
7 on fraud, consumer protection and fair lending issues;

8 (3) Two hours of training related to lending standards for  
9 the nontraditional mortgage product marketplace; and

10 (4) Two hours of training related to West Virginia  
11 mortgage and consumer laws or issues.

12 (b) For purposes of subsection (a) of this section,  
13 prelicensing education courses shall be reviewed and  
14 approved by the Nationwide Mortgage Licensing System and  
15 Registry or the Division based upon reasonable standards.

16 Review and approval of a prelicensing education course shall  
17 include review and approval of the course provider.

18 (c) Nothing in this section precludes any prelicensing  
19 education course, as approved by the Nationwide Mortgage  
20 Licensing System and Registry or the Division, that is  
21 provided by the employer of the applicant or an entity which  
22 is affiliated with the applicant by an agency contract, or any  
23 subsidiary or affiliate of such employer or entity.

24 (d) Prelicensing education may be offered either in a  
25 classroom, online or by any other means approved by the  
26 Nationwide Mortgage Licensing System and Registry.

27 (e) The prelicensing education requirements approved by  
28 the Nationwide Mortgage Licensing System and Registry or  
29 the Division in subdivisions (1), (2) and (3) subsection (a) of  
30 this section for any state shall be accepted as credit towards  
31 completion of prelicensing education requirements in West  
32 Virginia.

33 (f) A person previously licensed under this article  
34 subsequent to July 1, 2009, applying to be licensed again  
35 must prove that they have completed all of the continuing  
36 education requirements for the year in which the license was  
37 last held.

**§31-17A-9. Continuing education for mortgage loan originators.**

1 (a) To meet the annual continuing education  
2 requirements, a licensed mortgage loan originator must  
3 complete at least eight hours of education approved in  
4 accordance with subsection (b) of this section, which shall  
5 include at least:

6 (1) Three hours of federal law and regulations;

7 (2) Two hours of ethics, which shall include instruction  
8 on fraud, consumer protection and fair lending issues;

9 (3) Two hours of training related to lending standards for  
10 the nontraditional mortgage product marketplace; and

11 (4) One hour of West Virginia law or regulations.

12 (b) For purposes of subsection (a) of this section,  
13 continuing education courses shall be reviewed and approved  
14 by the Nationwide Mortgage Licensing System and Registry  
15 or the Division based upon reasonable standards. Review  
16 and approval of a continuing education course shall include  
17 review and approval of the course provider.

18 (c) Nothing in this section precludes any education  
19 course, as approved by the Nationwide Mortgage Licensing  
20 System and Registry, that is provided by the employer of the  
21 mortgage loan originator or an entity which is affiliated with  
22 the mortgage loan originator by an agency contract, or any  
23 subsidiary or affiliate of the employer or entity.

24 (d) Continuing education may be offered either in a  
25 classroom, online or by any other means approved by the  
26 Nationwide Mortgage Licensing System and Registry.

27 (e) A licensed mortgage loan originator:

28 (1) Except for subsection (b), section eight of this article  
29 and subsection (i) of this section, may only receive credit for  
30 a continuing education course in the year in which the course  
31 is taken; and

32 (2) May not take the same approved course in the same  
33 or successive years to meet the annual requirements for  
34 continuing education.

35 (f) A licensed mortgage loan originator who is an  
36 approved instructor of an approved continuing education  
37 course may receive credit for the licensed mortgage loan  
38 originator's own annual continuing education requirement at  
39 the rate of two hours credit for every one hour taught.

40 (g) A person having successfully completed the education  
41 requirements approved by the Nationwide Mortgage  
42 Licensing System and Registry in subdivisions (1), (2) and  
43 (3), subsection (a) of this section for any state shall be  
44 accepted as credit towards completion of continuing  
45 education requirements in West Virginia.

46 (h) A licensed mortgage loan originator who  
47 subsequently becomes unlicensed must complete the  
48 continuing education requirements for the last year in which  
49 the license was held prior to issuance of a new or renewed  
50 license.

51 (i) A person meeting the renewal requirements of  
52 subsections (a)(1) and (3) of section eight may make up any  
53 deficiency in continuing education as established by the  
54 commissioner.

**§31-17A-12. Enforcement authorities, violations and penalties.**

1 (a) To ensure the effective supervision and enforcement  
2 of this article, the commissioner may:

3 (1) Deny, suspend, revoke, condition or decline to renew  
4 a license issued under this article for a violation of this article  
5 or rules or order or directive entered under this article;

6 (2) Deny, suspend, revoke, condition or decline to renew  
7 a license if an applicant or licensee fails at any time to meet  
8 the requirements of section five or eight of this article, or

9 withholds information or makes a material misstatement in an  
10 application for a license or renewal of a license;

11 (3) Order restitution against persons subject to this article  
12 for violations of this article;

13 (4) Impose civil administrative penalties on persons  
14 subject to this article pursuant to subsections (b), (c) and (d)  
15 of this section; and

16 (5) Issue orders or directives under this article as follows:

17 (A) Order or direct persons subject to this article to cease  
18 and desist from conducting business, including immediate  
19 temporary orders to cease and desist;

20 (B) Order or direct persons subject to this article to cease  
21 any harmful activities or violations of this article, including  
22 immediate temporary orders to cease and desist;

23 (C) Enter immediate temporary orders to cease business  
24 under a license or interim license issued pursuant to the  
25 authority granted under section three if the commissioner  
26 determines that such license was erroneously issued or the  
27 licensee is currently in violation of this article; and

28 (D) Order or direct such other affirmative action as the  
29 commissioner deems necessary.

30 (b) The commissioner may impose a civil administrative  
31 penalty on a mortgage loan originator or person subject to  
32 this article if the commissioner finds, on the record after  
33 notice and opportunity for hearing, that such mortgage loan  
34 originator or person subject to this article has violated or  
35 failed to comply with any requirement of this article or any  
36 rule prescribed by the commissioner under this article or  
37 order issued under authority of this article.

38 (c) The maximum amount of penalty for each act or  
39 omission described in subsection (b) of this section shall be  
40 \$25,000.

41 (d) Each violation or failure to comply with any directive  
42 or order of the commissioner is a separate and distinct  
43 violation or failure.

44 (e) If the commissioner takes any enforcement action  
45 under this article, he or she shall enter an order to that effect  
46 and shall cause a copy of that order to be served in person or  
47 by certified mail, return receipt requested, or in any other  
48 manner in which process in a civil action in this state may be  
49 served, on the applicant or licensee. The commissioner shall  
50 also submit a copy of the order for publication in the  
51 Nationwide Mortgage Licensing System and Registry when  
52 that functionality of the system becomes available. An  
53 applicant or licensee adversely affected by an order may  
54 request an appeal and shall be provided a hearing as provided  
55 in section fourteen, article seventeen of this chapter.

**§31-17A-13. Surety bond required.**

1 (a) Each mortgage loan originator must be covered by a  
2 surety bond in accordance with this section in favor of the  
3 state for the benefit of consumers or for a claim by the  
4 commissioner for an unpaid civil administrative penalty or  
5 unpaid examination invoice. If the mortgage loan originator  
6 is an employee or exclusive agent of a person subject to this  
7 article, article seventeen of this chapter, or article four,  
8 chapter forty-six-a of this code, the surety bond of that person  
9 may be used in lieu of the mortgage loan originator's  
10 individual surety bond requirement. Any person not subject  
11 to licensing as a mortgage lender or broker under article  
12 seventeen, chapter thirty-one of this code or article four,  
13 chapter forty-six-a of this code that employs a mortgage loan

14 originator licensed under this article may elect to register  
15 with the Nationwide Mortgage Licensing System and  
16 Registry and provide a surety bond in the appropriate amount  
17 for the mortgage loan originator employed.

18 (1) The surety bond must provide coverage for each  
19 mortgage loan originator in an amount as prescribed in  
20 subsection (b) of this section.

21 (2) The surety bond shall be in a form as prescribed by  
22 the commissioner.

23 (3) The commissioner may promulgate rules with respect  
24 to the requirements for such surety bonds as are necessary to  
25 accomplish the purposes of this article.

26 (b) The penal sum of the surety bond shall be maintained  
27 in an amount as required by article seventeen of this chapter  
28 for licensed mortgage lenders and brokers or article four,  
29 chapter forty-six-a of this code for regulated consumer  
30 lenders.

31 (c) When an action is commenced on a licensee's bond or  
32 any bond covering the activities of a licensee under this  
33 article, the commissioner may require the filing of a new  
34 bond.


35 (d) Immediately upon recovery upon any action on a  
36 bond covering any licensee under this article, a new bond  
37 shall be filed.

38 (e) The commissioner may elect to reduce or waive the  
39 bond amounts imposed by this section for mortgage loan  
40 originators employed by bona fide nonprofit corporations or  
41 other bona fide nonprofit business entities, including  
42 community housing development organizations, or any



43 agency or instrumentality of this state, federal, county or  
44 municipal government whose residential mortgage lending or  
45 brokering activities provide housing primarily to households  
46 or persons below the HUD-established median income for  
47 their area of residence if the commissioner determines that a  
48 reduction or waiver would not violate any applicable law.  
49 Any waiver of fees or other costs under this paragraph shall  
50 not be construed as a waiver of the duty to comply with all  
51 other provisions of this article.


That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

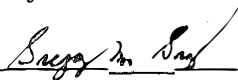
  
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Chairman Senate Committee

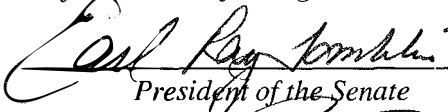
  
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Chairman House Committee

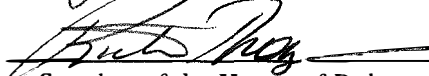
Originating in the House.

In effect ninety days from passage.

  
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Clerk of the Senate

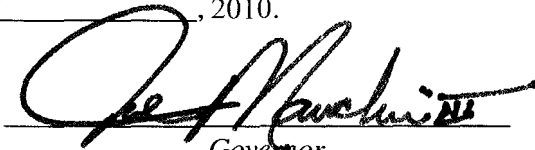
  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

2010 APR -1 PM 4:25  
OFFICE OF THE CLERK OF THE SENATE

The within is approved this the 1st  
day of April, 2010.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 26 2010

Time 1:40 p