

H. B. 2962

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(By Delegates Perry, Hartman, Moore, Reynolds,
Hall, Walters, Miller, Azinger and Ashley

(By Request of the Commissioner of Banking)

[Introduced February 1, 2011; referred to the
Committee on Banking and Insurance then the Judiciary.]

10 A BILL to amend and reenact §31-17-12 of the Code of West Virginia,
11 1931, as amended, relating to the Commissioner of Banking's
12 imposition of a fine or penalty on residential mortgage
13 brokers and lenders; increasing the maximum amount of a fine
14 or penalty that may be imposed from \$1000 per day to \$2000 per
15 day for each violation; providing that each day; excluding
16 Sundays and holidays, that an unlicensed person holds himself
17 or herself out to the general public as a mortgage lender or
18 broker constitutes a separate violation; and removing the
19 need for prior notification from the commissioner before a
20 fine or penalty may be assessed for unlicensed activity.

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

22 That §31-17-12 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted to read as follows:

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

26 **§31-17-12. Grounds for suspension or revocation of license;**
27 **suspension and revocation generally; reinstatement**
28 **or new license.**

1 (a) The commissioner may suspend or revoke any broker or
2 lender license issued hereunder if he or she finds that the
3 licensee or any owner, director, officer, member, partner,
4 stockholder, employee or agent of the licensee:

5 (1) Has knowingly violated any provision of this article or
6 any order, decision or rule of the commissioner lawfully made
7 pursuant to the authority of this article;

8 (2) Has knowingly made any material misstatement in the
9 application for the license;

10 (3) Does not have available the net worth required by the
11 provisions of section four of this article, if applicable;

12 (4) Has failed or refused to keep the bond required by this
13 article in full force and effect, if applicable;

14 (5) In the case of a foreign corporation, does not remain
15 qualified to do business in this state;

16 (6) Has committed any fraud or engaged in any dishonest
17 activities with respect to any mortgage loan business in this state
18 or failed to disclose any of the material particulars of any
19 mortgage loan transaction in this state to anyone entitled to the
20 information; or

21 (7) Has otherwise demonstrated bad faith, dishonesty or any
22 other quality indicating that the business of the licensee in this
23 state has not been or will not be conducted honestly or fairly
24 within the purpose of this article. It shall be a demonstration of
25 bad faith and an unfair or deceptive act or practice to engage in
26 a pattern of making loans where the consumer has insufficient

1 sources of income to timely repay the debt and the lender had the
2 primary intent to acquire the property upon default rather than to
3 derive profit from the loan. This section may not limit any right
4 the consumer may have to bring an action for a violation of section
5 one hundred four, article six, chapter forty-six-a of this code in
6 an individual case.

7 The commissioner may also suspend or revoke the license of a
8 licensee if he or she finds the existence of any ground upon which
9 the license could have been refused or any ground which would be
10 cause for refusing a license to the licensee were he or she then
11 applying for the same. The commissioner may also suspend or revoke
12 the license of a licensee pursuant to his or her authority under
13 section thirteen, article two, chapter thirty-one-a of this code.

14 (b) The suspension or revocation of the license of any
15 licensee does not impair or affect the obligation of any
16 preexisting lawful mortgage loan between the licensee and any
17 obligor.

18 (c) The commissioner may reinstate a suspended license, or
19 issue a new license to a licensee whose license has been revoked,
20 if the grounds upon which any license was suspended or revoked have
21 been eliminated or corrected and the commissioner is satisfied that
22 the grounds are not likely to recur.

23 (d) In addition to the authority conferred under this section,
24 the commissioner may impose a fine or penalty not exceeding ~~\$1000~~
25 \$2,000 upon any lender or broker required to be licensed under this
26 ~~chapter~~ article who the commissioner determines has violated any of

1 the provisions of this ~~chapter~~ article. For the purposes of this
2 section, each separate violation is subject to the fine or penalty
3 ~~herein prescribed and~~ provided in this section. Each day ~~after the~~
4 ~~date of notification,~~ excluding Sundays and holidays, that an
5 unlicensed person engages in the business or holds himself or
6 herself out to the general public as a mortgage lender or broker
7 ~~shall constitute~~ is a separate violation.

NOTE: The purpose of this bill is to increase the amount of a fine or penalty the Commissioner of Banking may impose on residential mortgage brokers and lenders for violations of this article.

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