

COMMITTEE SUBSTITUTE

FOR

## **H. B. 2962**

---

(BY DELEGATES PERRY, HARTMAN, MOORE, REYNOLDS,  
HALL, WALTERS, MILLER, AZINGER AND ASHLEY)

---

(Originating in the House Committee on Banking and Insurance)  
[February 9, 2011]

A BILL to amend and reenact §31-17-12 of the Code of West Virginia, 1931, as amended, relating to imposition of a fine or penalty by the Commissioner of Banking on residential mortgage brokers and lenders for a violation of the West Virginia Residential Mortgage Lender, Broker and Servicer Act; increasing the maximum amount of a fine or penalty that may be imposed from \$1000 to \$2000 for each violation; removing the requirement of prior notification from the

commissioner before a fine or penalty may be imposed upon an unlicensed person who engages in the business or holds himself or herself out to the public as a mortgage lender or mortgage broker; and clarifying that a fine or penalty may be imposed for a violation of the Act. *Be it enacted by the Legislature of West Virginia:*

That §31-17-12 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.**

**§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license; penalties and fines for violation of this article.**

1 (a) The commissioner may suspend or revoke any broker  
2 or 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  
6 or any order, decision or rule of the commissioner lawfully  
7 made 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  
18 state or failed to disclose any of the material particulars of  
19 any mortgage loan transaction in this state to anyone entitled  
20 to the information; or

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

28 the debt and the lender had the primary intent to acquire the  
29 property upon default rather than to derive profit from the  
30 loan. This section may not limit any right the consumer may  
31 have to bring an action for a violation of section one hundred  
32 four, article six, chapter forty-six-a of this code in an  
33 individual case.

34 The commissioner may also suspend or revoke the  
35 license of a licensee if he or she finds the existence of any  
36 ground upon which the license could have been refused or  
37 any ground which would be cause for refusing a license to  
38 the licensee were he or she then applying for the same. The  
39 commissioner may also suspend or revoke the license of a  
40 licensee pursuant to his or her authority under section  
41 thirteen, article two, chapter thirty-one-a of this code.

42 (b) The suspension or revocation of the license of any  
43 licensee does not impair or affect the obligation of any  
44 preexisting lawful mortgage loan between the licensee and  
45 any obligor.

46 (c) The commissioner may reinstate a suspended license,  
47 or issue a new license to a licensee whose license has been

48 revoked, if the grounds upon which any license was  
49 suspended or revoked have been eliminated or corrected and  
50 the commissioner is satisfied that the grounds are not likely  
51 to recur.

52 (d) In addition to the authority conferred under this  
53 section, the commissioner may impose a fine or penalty not  
54 exceeding ~~\$1,000~~ \$2,000 upon any lender or broker required  
55 to be licensed under this ~~chapter~~ article who the  
56 commissioner determines has violated any of the provisions  
57 of this ~~chapter~~ article. For the purposes of this section, each  
58 separate violation is subject to the fine or penalty ~~herein~~  
59 ~~prescribed and~~ provided in this section. Each day ~~after the~~  
60 ~~date of notification~~, excluding Sundays and holidays, that an  
61 unlicensed person engages in the business or holds himself or  
62 herself out to the general public as a mortgage lender or  
63 broker ~~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.