

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 551**

4 (By Senator Snyder)

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6 [Originating in the Committee on Banking and Insurance;  
7 reported February 21, 2012.]

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9  
10 A BILL to amend and reenact §31-17-8 of the Code of West Virginia,  
11 1931, as amended, relating to prohibitions on primary and  
12 subordinate mortgage loans.

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

14 That §31-17-8 of the Code of West Virginia, 1931, as amended,  
15 be amended and reenacted to read as follows:

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

18 **§31-17-8. Maximum interest rate on subordinate loans; prepayment**  
19 **rebate; maximum points, fees and charges; overriding**  
20 **of federal limitations; limitations on lien**  
21 **documents; prohibitions on primary and subordinate**  
22 **mortgage loans; civil remedy.**

23 (a) The maximum rate of finance charges on or in connection  
24 with any subordinate mortgage loan may not exceed eighteen percent  
25 per year on the unpaid balance of the amount financed.

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

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

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

1 United States Depository Institutions Deregulation and Monetary  
2 Control Act of 1980, 12 U. S. C. §1735f-7a, the state law  
3 limitations contained in this section shall apply.

4 (e) Notwithstanding other provisions of this section, a  
5 delinquent charge or late charge may be charged on any installment  
6 made ten or more days after the regularly scheduled due date in  
7 accordance with section one hundred twelve or one hundred thirteen,  
8 article three, chapter forty-six-a of this code, whichever is  
9 applicable. The charge may be made only once on any one  
10 installment during the term of the primary or subordinate mortgage  
11 loan.

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

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

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

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

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

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

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

15 (1) Any power of attorney to confess judgment;

16 (2) Any provision whereby the borrower waives any rights  
17 accruing to him or her under the provisions of this article;

18 (3) Any requirement that more than one installment be payable  
19 in any one installment period, or that the amount of any  
20 installment be greater or less than that of any other installment,  
21 except for the final installment which may be in a lesser amount,  
22 or unless the loan is structured as a revolving line of credit  
23 having no set final payment date;

24 (4) Any assignment of or order for the payment of any salary,  
25 wages, commissions or other compensation for services, or any part  
26 thereof, earned or to be earned;

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

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

6 (k) No licensee shall charge a borrower or receive from a  
7 borrower money or other valuable consideration as compensation  
8 before completing performance of all services the licensee has  
9 agreed to perform for the borrower unless the licensee also  
10 registers and complies with all requirements set forth for credit  
11 service organizations in article six-c, chapter forty-six-a of this  
12 code, including all additional bonding requirements as may be  
13 established therein.

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

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

20 (1) Collect a fee not disclosed to the borrower; collect any  
21 attorney fee at closing in excess of the fee that has been or will  
22 be remitted to the attorney; collect a fee for a product or service  
23 where the product or service is not actually provided; misrepresent  
24 the amount charged by or paid to a third party for a product or  
25 service; or collect duplicate fee or points to act as both broker  
26 and lender for the same mortgage loan, however, fees and points may

1 be divided between the broker and the lender as they agree, but may  
2 not exceed the total charges otherwise permitted under this  
3 article: *Provided*, That the fact of any fee, point or compensation  
4 is disclosed to the borrower consistent with the solicitation  
5 representation made to the borrower;

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

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

18 (4) Require the borrower to pay, in addition to any periodic  
19 interest, combined fees, compensation or points of any kind to the  
20 lender and broker to arrange, originate, evaluate, maintain or  
21 service a loan secured by any encumbrance on residential property  
22 that exceed, in the aggregate, six percent of the loan amount  
23 financed, including any yield spread premium paid by the lender to  
24 the broker: *Provided*, That reasonable closing costs, as defined in  
25 section one hundred two, article one, chapter forty-six-a of this  
26 code, payable to unrelated third parties may not be included within

1 this limitation: *Provided, however,* That no yield spread premium  
2 is permitted for any loan for which the annual percentage rate  
3 exceeds eighteen percent per year on the unpaid balance of the  
4 amount financed: *Provided further,* That if no yield spread premium  
5 is charged, the aggregate of fees, compensation or points can be no  
6 greater than five percent of the loan amount financed. The  
7 financing of the fees and points are permissible and, where  
8 included as part of the finance charge, does not constitute  
9 charging interest on interest. To the extent that this section  
10 overrides the preemption on limiting points and other charges on  
11 first lien residential mortgage loans contained in the United  
12 States Depository Institutions Deregulation and Monetary Control  
13 Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations  
14 contained in this section ~~applies~~ apply;

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

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

21 (7) Require terms of repayment which do not result in  
22 continuous monthly reduction of the original principal amount of  
23 the loan: *Provided,* That the provisions of this subdivision may  
24 not apply to reverse mortgage loans obtained under article  
25 twenty-four, chapter forty-seven of this code, home equity,  
26 open-end lines of credit, bridge loans used in connection with the

1 purchase or construction of a new residential dwelling or  
2 commercial loans for multiple residential purchases;

3 (8) Secure a primary or subordinate mortgage loan in a  
4 principal amount that, when added to the aggregate total of the  
5 outstanding principal balances of all other primary or subordinate  
6 mortgage loans secured by the same property, exceeds the fair  
7 market value of the property on the date that the latest mortgage  
8 loan is made. For purposes of this paragraph, a broker or lender  
9 may rely upon a bona fide written appraisal of the property made by  
10 an independent third-party appraiser, duly licensed or certified by  
11 the West Virginia Real Estate Appraiser Licensing and Certification  
12 Board and prepared in compliance with the uniform standards of  
13 professional appraisal practice: Provided, That commencing January  
14 1, 2012, and continuing until January 1, 2015, this prohibition  
15 does not apply to any mortgage modification loan made in  
16 participation with and in compliance with the federal Homes  
17 Affordable Modification Program, a part of the federal Making Home  
18 Affordable program, or any other mortgage modification loan funded  
19 through any other federal or state program or litigation  
20 settlement;

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

24 (10) Knowingly violate any provision of any other applicable  
25 state or federal law regulating primary or subordinate mortgage  
26 loans, including, without limitation, chapter forty-six-a of this

1 code.

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(NOTE: The purpose of this bill is to provide an exception to current mortgage loan limitations to permit participation in a federal program providing home mortgage relief under certain circumstances. Under the program, a modification loan may exceed the fair market value of the property at the time of the loan.

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