

1 **H. B. 4273**

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3 (By Delegates Moore, Reynolds and Azinger)
4 [Introduced January 24, 2012; referred to the
5 Committee on Banking and Insurance then the Judiciary.]
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10 A BILL to amend and reenact §31-17-2 of the Code of West Virginia,
11 1931, as amended; relating to license required for residential
12 mortgage lenders and brokers and exemptions thereto,
13 eliminating the exemption for a lender under the regular
14 supervision and examination for consumer compliance by any
15 agency of the federal government.

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

17 That §31-17-2 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

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

20 **SERVICER ACT.**

21 **§31-17-2. License required for lender and broker originator;**
22 **exemptions.**

23 (a) A person may not engage in this state in the business of

1 lender or broker unless and until he or she first obtains a license
2 to do so from the commissioner, which license remains unexpired,
3 unsuspended and unrevoked, and no foreign corporation may engage in
4 business in this state unless it is registered with the Secretary
5 of State to transact business in this state.

6 (b) All mortgage loan originators, as that term is defined by
7 section two, article seventeen-a of this chapter, shall obtain a
8 mortgage loan originator license pursuant to said article.

9 (c) Brokerage fees, additional charges and finance charges
10 imposed by licensed mortgage brokers, lenders and loan originators
11 are exempt from the tax imposed by article fifteen, chapter eleven
12 of this code beginning on January 1, 2004.

13 (d) The provisions of this article do not apply to loans made
14 by the following:

15 (1) Federally insured depository institutions;

16 (2) Regulated consumer lender licensees;

17 (3) Insurance companies;

18 ~~(4) Any other lender under the regular supervision and~~
19 ~~examination for consumer compliance of any agency of the federal~~
20 ~~government;~~

21 ~~(5)~~ (4) Any agency or instrumentality of this state, federal,
22 county or municipal government or on behalf of the agency or
23 instrumentality;

24 ~~(6)~~ (5) By a nonprofit community development organization

1 making mortgage loans to promote home ownership or improvements for
2 the disadvantaged which loans are subject to federal, state, county
3 or municipal government supervision and oversight; or

4 ~~(7)~~ (6) Habitat for Humanity International, Inc., and its
5 affiliates providing low-income housing within this state. Loans
6 made subject to this exemption may be assigned, transferred, sold
7 or otherwise securitized to any person and shall remain exempt from
8 the provisions of this article, except as to reporting requirements
9 in the discretion of the commissioner where the person is a
10 licensee under this article. Nothing herein shall prohibit a broker
11 licensed under this article from acting as broker of an exempt loan
12 and receiving compensation as permitted under the provisions of
13 this article.

14 (e) The provisions of this article do not apply to loans
15 brokered by a federally insured depository institution.

16 (f) A person or entity designated in subsection (d) of this
17 section may take assignments of a primary or subordinate mortgage
18 loan from a licensed lender and the assignments of said loans that
19 they themselves could have lawfully made as exempt from the
20 provisions of this article under this section do not make that
21 person or entity subject to the licensing, bonding, reporting or
22 other provisions of this article except as the defense or claim
23 would be preserved pursuant to section one hundred two, article
24 two, chapter forty-six-a of this code.

1 (g) The placement or sale for securitization of a primary or
2 subordinate mortgage loan into a secondary market by a licensee may
3 not subject the warehouser or final securitization holder or
4 trustee to the provisions of this article: *Provided*, That the
5 warehouser, final securitization holder or trustee under an
6 arrangement is either a licensee, or person or entity entitled to
7 make exempt loans of that type under this section, or the loan is
8 held with right of recourse to a licensee.

NOTE: The purpose of this bill is to eliminate the exemption from licensing as a mortgage lender that may be available to subsidiaries of banks.

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