

1 **Senate Bill No. 551**

2 (By Senator Snyder)

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4 [Introduced February 9, 2012; referred to the Committee on

5 Banking and Insurance.]

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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

1 with any subordinate mortgage loan may not exceed eighteen percent
2 per year on the unpaid balance of the amount financed.

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

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

17 (d) Where loan origination fees, investigation fees or points
18 have been charged by the licensee, the charges may not be imposed
19 again in any refinancing of that loan or any additional loan on
20 that property made within twenty-four months thereof, unless the
21 new loan has a reasonable, tangible net benefit to the borrower
22 considering all of the circumstances, including the terms of both
23 the new and the refinanced loans, the cost of the new loan and the
24 borrower's circumstances. The licensee shall document this benefit

1 in writing on a form prescribed by the commissioner and maintain
2 ~~such~~ the documentation in the loan file. To the extent this
3 subdivision overrides the preemption on limiting points and other
4 charges on first lien residential mortgage loans contained in the
5 United States Depository Institutions Deregulation and Monetary
6 Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations
7 contained in this section shall apply.

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

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

23 (g) Except for fees for services provided by unrelated third
24 parties for appraisals, inspections, title searches and credit

1 reports, no application fee may be allowed whether or not the
2 mortgage loan is consummated; however, the borrower may be required
3 to reimburse the licensee for actual expenses incurred by the
4 licensee in a purchase money transaction after acceptance and
5 approval of a mortgage loan proposal made in accordance with the
6 provisions of this article which is not consummated because of:

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

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

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

13 (i) No licensee shall induce or permit any borrower to become
14 obligated to the licensee under this article, directly or
15 contingently, or both, under more than one subordinate mortgage
16 loan at the same time for the purpose or with the result of
17 obtaining greater charges than would otherwise be permitted under
18 the provisions of this article.

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

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

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

24 (3) Any requirement that more than one installment be payable

1 in any one installment period, or that the amount of any
2 installment be greater or less than that of any other installment,
3 except for the final installment which may be in a lesser amount,
4 or unless the loan is structured as a revolving line of credit
5 having no set final payment date;

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

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

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

14 (k) No licensee shall charge a borrower or receive from a
15 borrower money or other valuable consideration as compensation
16 before completing performance of all services the licensee has
17 agreed to perform for the borrower unless the licensee also
18 registers and complies with all requirements set forth for credit
19 service organizations in article six-c, chapter forty-six-a of this
20 code, including all additional bonding requirements as may be
21 established therein.

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

1 (m) In making any primary or subordinate mortgage loan, no
2 licensee may, and no primary or subordinate mortgage lending
3 transaction may, contain terms which:

4 (1) Collect a fee not disclosed to the borrower; collect any
5 attorney fee at closing in excess of the fee that has been or will
6 be remitted to the attorney; collect a fee for a product or service
7 where the product or service is not actually provided; misrepresent
8 the amount charged by or paid to a third party for a product or
9 service; or collect duplicate fee or points to act as both broker
10 and lender for the same mortgage loan, however, fees and points may
11 be divided between the broker and the lender as they agree, but may
12 not exceed the total charges otherwise permitted under this
13 article: *Provided*, That the fact of any fee, point or compensation
14 is disclosed to the borrower consistent with the solicitation
15 representation made to the borrower;

16 (2) Compensate, whether directly or indirectly, coerce or
17 intimidate an appraiser for the purpose of influencing the
18 independent judgment of the appraiser with respect to the value of
19 real estate that is to be covered by a deed of trust or is being
20 offered as security according to an application for a primary or
21 subordinate mortgage loan;

22 (3) Make or assist in making any primary or subordinate
23 mortgage loan with the intent that the loan will not be repaid and
24 that the lender will obtain title to the property through

1 foreclosure: *Provided*, That this subdivision shall not apply to
2 reverse mortgages obtained under the provisions of article
3 twenty-four, chapter forty-seven of this code;

4 (4) Require the borrower to pay, in addition to any periodic
5 interest, combined fees, compensation, or points of any kind to the
6 lender and broker to arrange, originate, evaluate, maintain or
7 service a loan secured by any encumbrance on residential property
8 that exceed, in the aggregate, six percent of the loan amount
9 financed, including any yield spread premium paid by the lender to
10 the broker: *Provided*, That reasonable closing costs, as defined in
11 section one hundred two, article one, chapter forty-six-a of this
12 code, payable to unrelated third parties may not be included within
13 this limitation: *Provided, however*, That no yield spread premium
14 is permitted for any loan for which the annual percentage rate
15 exceeds eighteen percent per year on the unpaid balance of the
16 amount financed: *Provided further*, That if no yield spread premium
17 is charged, the aggregate of fees, compensation or points can be no
18 greater than five percent of the loan amount financed. The
19 financing of the fees and points are permissible and, where
20 included as part of the finance charge, does not constitute
21 charging interest on interest. To the extent that this section
22 overrides the preemption on limiting points and other charges on
23 first lien residential mortgage loans contained in the United
24 States Depository Institutions Deregulation and Monetary Control

1 Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations
2 contained in this section ~~applies~~ apply;

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

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

9 (7) Require terms of repayment which do not result in
10 continuous monthly reduction of the original principal amount of
11 the loan: *Provided*, That the provisions of this subdivision may
12 not apply to reverse mortgage loans obtained under article
13 twenty-four, chapter forty-seven of this code, home equity,
14 open-end lines of credit, bridge loans used in connection with the
15 purchase or construction of a new residential dwelling or
16 commercial loans for multiple residential purchases;

17 (8) Except for a mortgage modification loan made in
18 participation with and in compliance with the federal Homes
19 Affordable Modification Program, a part of the federal Making Home
20 Affordable Program, secure a primary or subordinate mortgage loan
21 in a principal amount that, when added to the aggregate total of
22 the outstanding principal balances of all other primary or
23 subordinate mortgage loans secured by the same property, exceeds
24 the fair market value of the property on the date that the latest

1 mortgage loan is made. For purposes of this paragraph, a broker or
2 lender may rely upon a bona fide written appraisal of the property
3 made by an independent third-party appraiser, duly licensed or
4 certified by the West Virginia real estate appraiser licensing and
5 certification board and prepared in compliance with the uniform
6 standards of professional appraisal practice;

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

10 (10) Knowingly violate any provision of any other applicable
11 state or federal law regulating primary or subordinate mortgage
12 loans, including, without limitation, chapter forty-six-a of this
13 code.

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.