

1 **H. B. 4116**

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3 (By Delegates Perry, Hartman and Azinger)
4 [Introduced January 9, 2014; referred to the
5 Committee on Banking and Insurance then the Judiciary.]
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10 A BILL to amend and reenact §31-17A-2 of the Code of West Virginia,
11 1931, as amended, relating to permitting certain owners of
12 residential real estate a limited exemption from the licensing
13 requirements of the West Virginia Safe Mortgage Licensing Act
14 for self-financed home financing.

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

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

18 **ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE**

19 **LICENSING ACT.**

20 **§31-17A-2. Definitions.**

21 As used in this article:

22 (a) "Commissioner" means the Commissioner of Banking of this
23 state;

1 (b) "Depository institution" has the same meaning as in
2 section three of the Federal Deposit Insurance Act and includes any
3 federally insured credit union; and,

4 (c) "Division" means the West Virginia Division of Banking;

5 (d) "Federal banking agencies" means the board of Governors of
6 the Federal Reserve System, the Comptroller of the Currency, the
7 Director of the Office of Thrift Supervision, the National Credit
8 Union Administration and the Federal Deposit Insurance Corporation;

9 (e) "Immediate family member" means a spouse, child, sibling,
10 parent, grandparent or grandchild. This includes stepparents,
11 stepchildren, stepsiblings and adoptive relationships;

12 (f) "Individual" means a natural person; and,

13 (g) "Loan processor or underwriter" means an individual who
14 performs clerical or support duties as an employee at the direction
15 of and subject to the supervision and instruction of a person
16 licensed or exempt from licensing under article seventeen of this
17 chapter.

18 (1) For purposes of this paragraph, "clerical or support
19 duties" may include subsequent to the receipt of an application:

20 (A) The receipt, collection, distribution and analysis of
21 information common for the processing or underwriting of a
22 residential mortgage loan; and,

23 (B) Communicating with a consumer to obtain the information
24 necessary for the processing or underwriting of a loan, to the

1 extent that such communication does not include offering or
2 negotiating loan rates or terms, or counseling consumers about
3 residential mortgage loan rates or terms; or

4 (2) An individual engaging solely in loan processor or
5 underwriter activities shall not represent to the public, through
6 advertising or other means of communicating or providing
7 information, including the use of business cards, stationery,
8 brochures, signs, rate lists or other promotional items, that such
9 individual can or will perform any of the activities of a mortgage
10 loan originator;

11 (h) "Mortgage loan originator" means an individual who for
12 compensation or gain or in the expectation of compensation or gain
13 takes a residential mortgage loan application or offers or
14 negotiates terms of a residential mortgage loan and is sponsored by
15 a mortgage lender, broker or regulated consumer lender licensed by
16 the Division of Banking.

17 "Mortgage loan originator" does not include:

18 (1) An individual engaged solely as a loan processor or
19 underwriter except as otherwise provided in section three of this
20 article;

21 (2) An owner of residential real estate who in any twelve
22 consecutive month period makes no more than five
23 residential mortgage loans to purchasers of residential real estate
24 for all or part of the purchase price of the property against which

1 the mortgage is secured;

2 ~~(2)~~ (3) A person or entity that only performs real estate
3 brokerage activities and is licensed or registered in accordance
4 with West Virginia law, unless the person or entity is compensated
5 by a lender, a mortgage broker or other mortgage loan originator or
6 by any agent of such lender, mortgage broker or other mortgage loan
7 originator;

8 ~~(3)~~ (4) A person or entity solely involved in extensions of
9 credit relating to timeshare plans, as that term is defined in
10 Section 101(53D) of Title 11, United States Code; or

11 ~~(4)~~ (5) A manufactured or modular home retailer employee who
12 performs purely administrative or clerical tasks and who receives
13 only the customary salary or commission from the employer in
14 connection with the sales transaction;

15 (i) "Real estate brokerage activity" means any activity that
16 involves offering or providing real estate brokerage services to
17 the public, including:

18 (1) Acting as a real estate salesperson or real estate broker
19 for a buyer, seller, lessor or lessee of real property;

20 (2) Bringing together parties interested in the sale,
21 purchase, lease, rental or exchange of real property;

22 (3) Negotiating, on behalf of any party, any portion of a
23 contract relating to the sale, purchase, lease, rental or exchange
24 of real property other than in connection with providing financing

1 with respect to any such transaction;

2 (4) Engaging in any activity for which a person engaged in the
3 activity is required to be registered or licensed as a real estate
4 agent or real estate broker under any applicable law; and

5 (5) Offering to engage in any activity, or act in any
6 capacity, described in subsection (1), (2), (3) or (4) of this
7 section;

8 (j) "Nationwide Mortgage Licensing System and Registry" means
9 a mortgage licensing system developed and maintained by the
10 Conference of State Bank Supervisors and the American Association
11 of Residential Mortgage Regulators for the licensing and
12 registration of mortgage brokers and lenders licensed pursuant to
13 article seventeen of this chapter and mortgage loan originators
14 licensed pursuant to this article;

15 (k) "Nontraditional mortgage product" means any mortgage
16 product other than a fixed rate mortgage;

17 (l) "Person" means a natural person, corporation, company,
18 limited liability company, partnership or association;

19 (m) "Registered mortgage loan originator" means any individual
20 who:

21 (1) Meets the definition of mortgage loan originator and is an
22 employee of:

23 (A) A depository institution;

24 (B) A subsidiary that is:

1 (i) Owned and controlled by a depository institution; and

2 (ii) Regulated by a federal banking agency; or

3 (C) An institution regulated by the Farm Credit
4 Administration; and

5 (2) Is registered with, and maintains a unique identifier
6 through, the Nationwide Mortgage Licensing System and Registry;

7 (n) "Residential mortgage loan" means any loan primarily for
8 personal, family or household use that is secured by a mortgage,
9 deed of trust or other equivalent consensual security interest on
10 a dwelling as defined in Section 103(v) of the Truth in Lending Act
11 or residential real estate upon which is constructed or intended to
12 be constructed a dwelling;

13 (o) "Residential real estate" means any real property located
14 in West Virginia, upon which is constructed or intended to be
15 constructed a dwelling; and

16 (p) "Unique identifier" means a number or other identifier
17 assigned by protocols established by the Nationwide Mortgage
18 Licensing System and Registry.

NOTE: The purpose this bill is to permit certain owners of residential real estate a limited exemption from the licensing requirements of the West Virginia Safe Mortgage Licensing Act for self-financed home financing. The bill grants that exemption to owners of residential real estate who in any twelve consecutive month period make no more than five residential mortgage loans to purchasers of residential real estate for all or part of the

purchase price of the property against which the mortgage is secured.

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