

ENGROSSED

Senate Bill No. 285

(By Senators Nohe, Gaunch
and Plymale)

[Introduced January 22, 2015; referred to the
Committee on Banking and Insurance;
and then to the Committee on the Judiciary.]

A BILL to amend and reenact §31-17-1 and §31-17-8 of the Code of West Virginia, 1931, as amended, all relating to including consumer credit sales that are secured by mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate in definitions of "primary mortgage loan" and "subordinate mortgage loan"; providing exception to prohibition of balloon payments; and further extending exception to the ban on loans greater than one hundred percent loan-to-value for loan modifications or refinancing loans done through and in compliance with government programs or litigation settlements.

Be it enacted by the Legislature of West Virginia:

That §31-17-1 and §31-17-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (a) "Additional charges" means every type of charge arising out of the making or acceptance

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1 of a primary or subordinate mortgage loan, except finance charges, including, but not limited to,
2 official fees and taxes, reasonable closing costs and certain documentary charges and insurance
3 premiums and other charges which definition is to be read in conjunction with and permitted by
4 section one hundred nine, article three, chapter forty-six-a of this code;

5 (b) "Affiliated" means persons under the same ownership or management control. As to
6 corporations, limited liability companies or partnerships, where common owners manage or control
7 a majority of the stock, membership interests or general partnership interests of one or more such
8 corporations, limited liability companies or partnerships, those persons are considered affiliated. In
9 addition, persons under the ownership or management control of the members of an immediate
10 family shall be considered affiliated. For purposes of this section, "immediate family" means
11 mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and
12 grandchildren;

13 (c) "Amount financed" means the total of the following items to the extent that payment is
14 deferred:

15 (1) The cash price of the goods, services or interest in land, less the amount of any down
16 payment, whether made in cash or in property traded in;

17 (2) The amount actually paid or to be paid by the seller pursuant to an agreement with the
18 buyer to discharge a security interest in or a lien on property traded in; and

19 (3) If not included in the cash price:

20 (A) Any applicable sales, use, privilege, excise or documentary stamp taxes;

21 (B) Amounts actually paid or to be paid by the seller for registration, certificate of title or
22 license fees; and

23 (C) Additional charges permitted by this article;

24 (d) "Applicant" means a person who has applied for a lender or broker license;

25 (e) "Broker" means any person acting in the regular course of business who, for a fee or

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1 commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, or
2 originates or assigns a primary or subordinate mortgage loan between a lender and a borrower. A
3 person is considered to be acting in the regular course of business if he or she negotiates or arranges,
4 or offers to negotiate or arrange, or originates, processes or assigns any primary or subordinate
5 mortgage loans in any one calendar year; or if he or she seeks to charge a borrower or receive from
6 a borrower money or other valuable consideration in any primary or subordinate mortgage
7 transaction before completing performance of all broker services that he or she has agreed to perform
8 for the borrower;

9 (f) "Brokerage fee" means the fee or commission or other consideration charged by a broker
10 or loan originator for the services described in subdivision (e) of this section;

11 (g) "Commissioner" means the Commissioner of Financial Institutions of this state;

12 (h) "Consumer credit sale" means a consumer credit sale as defined in subdivision (13),
13 section one hundred two, article one, chapter forty-six-a of this code;

14 (i) "Finance charge" means the sum of all interest and similar charges payable directly or
15 indirectly by the debtor imposed or collected by the lender incident to the extension of credit as
16 coextensive with the definition of "loan finance charge" set forth in section one hundred two, article
17 one, chapter forty-six-a of this code;

18 (j) "Lender" means any person who makes or offers to make or accepts or offers to accept
19 or purchases or services any primary or subordinate mortgage loan in the regular course of business.
20 A person is considered to be acting in the regular course of business if he or she makes or accepts,
21 or offers to make or accept, any primary or subordinate mortgage loans in any one calendar year.

22 "Lender" does not include any person who does not currently have and has never held a
23 residential mortgage lender license in this or in any other state and who makes no more than three
24 primary or subordinate mortgage loans in any calendar year to purchasers of any dwelling owned by
25 that person: *Provided*, That the person is required to report within thirty days of the date of the loan

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1 any such mortgage loan to the Division of Financial Institutions on a form available from the
2 division upon request. Failure to timely report as required by this subsection may result in
3 imposition by the commissioner of a civil administrative penalty of up to \$250;

4 (k) "Licensee" means any person duly licensed by the commissioner under the provisions of
5 this article or article seventeen-a of this chapter as a lender, broker or mortgage loan originator;

6 (l) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing
7 system developed and maintained by the Conference of State Bank Supervisors and the American
8 Association of Residential Mortgage Regulators for the licensing and registration of licensed
9 mortgage brokers and lenders licensed under this article and mortgage loan originators licensed
10 under article seventeen-a of this chapter;

11 (m) "Person" means an individual, partnership, association, trust, corporation or any other
12 legal entity, or any combination thereof;

13 (n) "Primary mortgage loan" means any loan or consumer credit sale primarily for personal,
14 family or household use that is secured by a mortgage, deed of trust or other equivalent consensual
15 security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act or residential
16 real estate upon which is constructed or intended to be constructed a dwelling;

17 (o) "Servicing" or "servicing a residential mortgage loan" means through any medium or
18 mode of communication the collection or remittance for, or the right or obligation to collect or remit
19 for another lender, note owner or noteholder, payments of principal, interest, including sales finance
20 charges in a consumer credit sale, and escrow items as insurance and taxes for property subject to
21 a residential mortgage loan; and

22 (p) "Subordinate mortgage loan" means any loan or consumer credit sale primarily for
23 personal, family or household use that is secured by a mortgage, deed of trust or other equivalent
24 consensual security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act
25 or residential real estate upon which is constructed or intended to be constructed a dwelling and is

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1 subject to the lien of one or more prior recorded mortgages or deeds of trust.

2 **§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points,**
3 **fees and charges; overriding of federal limitations; limitations on lien**
4 **documents; prohibitions on primary and subordinate mortgage loans; civil**
5 **remedy.**

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

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

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

17 (d) Where loan origination fees, investigation fees or points have been charged by the
18 licensee, the charges may not be imposed again in any refinancing of that loan or any additional loan
19 on that property made within twenty-four months thereof, unless the new loan has a reasonable,
20 tangible net benefit to the borrower 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 borrower's circumstances. The
22 licensee shall document this benefit in writing on a form prescribed by the commissioner and
23 maintain the documentation in the loan file. To the extent this subsection overrides the preemption
24 on limiting points and other charges on first lien residential mortgage loans contained in the United
25 States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C.

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1 §1735f-7a, the state law limitations contained in this section shall apply.

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

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

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

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

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

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

23 (i) No licensee shall induce or permit any borrower to become obligated to the licensee under
24 this article, directly or contingently, or both, under more than one subordinate mortgage loan at the
25 same time for the purpose or with the result of obtaining greater charges than would otherwise be

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1 permitted under the provisions of this article.

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

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

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

7 (3) Any requirement that more than one installment be payable in any one installment period,
8 or that the amount of any installment be greater or less than that of any other installment, except for
9 the final installment which may be in a lesser amount, or unless the loan is structured as a revolving
10 line of credit having no set final payment date: Provided, That this prohibition does not apply to any
11 mortgage modification or refinancing loan made during the effective dates of and in participation
12 and compliance with the federal Homes Affordable Modification Program, a part of the federal
13 Making Home Affordable Modification Program or any other mortgage modification or refinancing
14 loan funded through any other federal or state program or litigation settlement;

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

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

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

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

25 (l) No licensee shall make or broker revolving loans secured by a primary or subordinate

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1 mortgage lien for the retail purchase of consumer goods and services by use of a lender credit card.

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

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

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

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

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

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

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

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

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

19 *Provided, however,* That this prohibition does not apply to any mortgage modification or refinancing
20 loan made during the effective dates of and in participation and compliance with the federal Homes
21 Affordable Modification Program, a part of the federal Making Home Affordable Modification
22 Program or any other mortgage modification or refinancing loan funded through any other federal
23 or state program or litigation settlement;

24 (8) Secure a primary or subordinate mortgage loan in a principal amount that, when added
25 to the aggregate total of the outstanding principal balances of all other primary or subordinate

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1 mortgage loans secured by the same property, exceeds the fair market value of the property on the
2 date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender may
3 rely upon a bona fide written appraisal of the property made by an independent third-party appraiser,
4 duly licensed or certified by the West Virginia Real Estate Appraiser Licensing and Certification
5 Board and prepared in compliance with the uniform standards of professional appraisal practice:
6 *Provided*, That commencing January 1, 2012, ~~and continuing until January 1, 2015~~, this prohibition
7 does not apply to any mortgage modification or refinancing loan made in participation ~~with and in~~
8 and compliance with the federal Homes Affordable Modification Program, a part of the federal
9 Making Home Affordable program, or any other mortgage modification or refinancing loan funded
10 through any other federal or state program or litigation settlement;

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

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