

SB 326

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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SENATE BILL NO. 326

(By Senator MANCHIN, ET AL)

PASSED MARCH 9, 1996
In Effect NINETY DAYS FROM Passage

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Senate Bill No. 326

(BY SENATORS MANCHIN, HELMICK, CRAIGO, DITTMAR,
SHARPE, WAGNER, KIMBLE, SCOTT, BLATNIK, CHAFIN,
WIEDEBUSCH AND YODER)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and eighteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five, six and seven, article two, chapter thirty-one-a of said code; and to amend and reenact section one hundred five, article one, chapter forty-six-a of said code, all relating to requiring the registration and licensing of consumer lending offices other than mortgage loan companies operating in West Virginia and modifying other banking institution requirements; revising secondary mortgage loan law; changing definitions; removing residency requirements for brokers; modifying maximum loan periods and acceptable loan charges; increasing bonding requirements for brokers; modifying application requirements for brokers; requir-

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ing the commissioner of banking to study the effects of longer allowable loan periods for second mortgages; precluding brokers from receiving any charges until loan is issued; redefining certain activities as unfair trade practices; allowing the banking commissioner certain discretion relating to periodic examination of brokers records; modifying grounds for revocation of licenses; modifying hearing requirements; referring and adopting penalties sections of consumer credit laws; establishing additional licensing requirements for brokers; establishing a per hour fee amount in which the commissioner of banking may charge financial institutions for periodic record reviews; modifying the release of record requirements of the banking commissioner; and clarifying what happens when the provisions contained herein are in conflict with other provisions of chapter thirty-one.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and eighteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five, six and seven, article two, chapter thirty-one-a of said code be amended and reenacted; and that section one hundred five, article one, chapter forty-six-a of said code be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 17. SECONDARY MORTGAGE LOANS.

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

1 As used in this article:

2 (1) "Secondary mortgage loan" means a loan made to
3 an individual or partnership which is secured in whole
4 or in part by a mortgage or deed of trust upon any
5 interest in real property used as a dwelling with accom-
6 modations for not more than four families, which prop-
7 erty is subject to the lien of one or more prior recorded
8 mortgages, deeds of trust or vendor's liens.

9 (2) "Person" means an individual, partnership, associa-
10 tion, trust, corporation or any other legal entity, or any
11 combination thereof.

12 (3) "Lender" means any person who makes or offers to
13 make or accepts or offers to accept any secondary
14 mortgage loan in the regular course of business. A
15 person shall be deemed to be acting in the regular course
16 of business if he or she makes or accepts, or offers to
17 make or accept, more than five secondary mortgage loans
18 in any one calendar year.

19 (4) "Broker" means any person who, for a fee or
20 commission or other consideration, negotiates or ar-
21 ranges, or who offers to negotiate or arrange, a second-
22 ary mortgage loan between a lender and a borrower.

23 (5) "Brokerage fee" means the fee or commission or
24 other consideration charged by a broker for the services
25 described in subsection (4) of this section.

26 (6) "Principal" or "principal sum" means the total of:

27 (a) The net amount paid to, receivable by or paid or
28 payable for the account of the debtor;

29 (b) The amount of any discount excluded from the loan
30 finance charge; and

31 (c) To the extent that payment is deferred:

32 (i) Amounts actually paid or to be paid by the lender
33 for registration, certificate of title or license fees if not
34 included in subdivision (a) of this subsection; and

35 (ii) Additional charges permitted by this article.

36 (7) "Additional Charges" means every type of charge
37 arising out of the making or acceptance of a secondary
38 mortgage loan, except finance charges, including, but not
39 limited to, official fees and taxes, reasonable closing
40 costs and certain documentary charges and insurance
41 premiums and other charges which definition is to be
42 read in conjunction with, and permitted by section one
43 hundred nine, article three, chapter forty-six-a of this

44 code.

45 (8) "Finance charge" means the sum of all interest and
46 similar charges payable directly or indirectly by the
47 debtor imposed or collected by the lender incident to the
48 extension of credit, as coextensive with the definition of
49 "loan finance charge" set forth in section one hundred
50 two, article one, chapter forty-six-a of this code.

51 (9) "Commissioner" means the commissioner of bank-
52 ing of this state.

53 (10) "Applicant" means a person who has applied for
54 a lender's or broker's license.

55 (11) "Licensee" means any person duly licensed by the
56 commissioner under the provisions of this article as a
57 lender or broker.

58 (12) "Amount financed" means the total of the follow-
59 ing items to the extent that payment is deferred:

60 (a) The cash price of the goods, services or interest in
61 land, less the amount of any down payment, whether
62 made in cash or in property traded in;

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

66 (c) If not included in the cash price:

67 (i) Any applicable sales, use, privilege, excise or
68 documentary stamp taxes;

69 (ii) Amounts actually paid or to be paid by the seller
70 for registration, certificate of title or license fees; and

71 (iii) Additional charges permitted by this article.

§31-17-2. License required for lender or broker; exemptions.

1 (a) No person shall engage in this state in the business
2 of lender or broker unless and until he or she shall first
3 obtain a license to do so from the commissioner, which
4 license remains unexpired, unsuspended and unrevoked,

5 and no foreign corporation shall, notwithstanding the
6 provisions of section seventy-nine-a, article one of this
7 chapter, engage in such business in this state unless it
8 shall qualify to hold property and transact business in
9 this state.

10 (b) The provisions of this article do not apply to loans
11 made by banking institutions, trust companies, savings
12 and loan associations, industrial loan companies, insur-
13 ance companies, credit unions or any federally insured
14 depository institution, or to loans made by any other
15 lender licensed by and under the supervision of any
16 agency of the federal government, or to loans made by, or
17 on behalf of, any agency or instrumentality of this state
18 or federal government or by a nonprofit community
19 development organization which loans are subject to
20 federal or state government supervision and oversight.

**§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals.**

1 (a) Application for a lender's or broker's license shall
2 each year be submitted in writing under oath, in the
3 form prescribed by the commissioner, and shall contain
4 the full name and address (both of the residence and
5 place of business) of the applicant and, if the applicant
6 is a partnership or association, of every member thereof,
7 and, if a corporation, of each officer, director and owner
8 of five percent or more of the capital stock thereof, and
9 such further information as the commissioner may
10 reasonably require. Any application shall also disclose
11 the location in this state at which the business of lender
12 or broker is to be conducted.

13 (b) At the time of making application for a lender's
14 license, the applicant therefor shall:

15 (1) If a foreign corporation, submit a certificate from
16 the secretary of state certifying that such applicant has
17 qualified to hold property and transact business in this
18 state;

19 (2) Submit proof that he or she has available for the

20 operation of the business at the location specified in the
21 application net assets of at least two hundred fifty
22 thousand dollars;

23 (3) File with the commissioner a bond in favor of the
24 state in the amount of one hundred thousand dollars, in
25 such form and with such conditions as the commissioner
26 may prescribe, and executed by a surety company
27 authorized to do business in this state;

28 (4) Pay to the commissioner a license fee of one thou-
29 sand dollars and an investigation fee of two hundred
30 fifty dollars. If the commissioner shall determine that an
31 investigation outside this state is required to ascertain
32 facts or information relative to the applicant or informa-
33 tion set forth in the application, the applicant may be
34 required to advance sufficient funds to pay the estimated
35 cost of the investigation. An itemized statement of the
36 actual cost of the investigation outside this state shall be
37 furnished to the applicant by the commissioner, and the
38 applicant shall pay or shall have returned to him or her,
39 as the case may be, the difference between his or her
40 payment in advance of the estimated cost and the actual
41 cost of the investigation; and

42 (5) Submit proof that the applicant is a business in
43 good standing in its state of incorporation, or if not a
44 corporation, its state of business registration, and a full
45 and complete disclosure of any litigation or unresolved
46 complaint filed by a governmental authority or class
47 action law suit on behalf of consumers relating to the
48 operation of the license applicant.

49 (c) At the time of making application for a broker's
50 license, the applicant therefor shall:

51 (1) If a foreign corporation, submit a certificate from
52 the secretary of state certifying that the applicant has
53 qualified to hold property and transact business in this
54 state;

55 (2) Submit proof that he or she has available for the
56 operation of the business at the location specified in the

57 application net assets of at least ten thousand dollars;

58 (3) File with the commissioner a bond in favor of the
59 state in the amount of one hundred thousand dollars, in
60 such form and with such conditions as the commissioner
61 may prescribe, and executed by a surety company
62 authorized to do business in this state;

63 (4) Pay to the commissioner a license fee of one hun-
64 dred dollars and an investigation fee of fifty dollars; and

65 (5) Submit proof that the applicant is a business in
66 good standing in its state of incorporation, or if not a
67 corporation, its state of business registration, and a full
68 and complete disclosure of any litigation or unresolved
69 complaint filed by a governmental authority or class
70 action law suit on behalf of consumers relating to the
71 operation of the license applicant.

72 (d) The aggregate liability of the surety on any bond
73 given pursuant to the provisions of this section shall in
74 no event exceed the amount of such bond.

75 (e) Nonresident lenders and brokers licensed under this
76 article by their acceptance of such license acknowledge
77 that they are subject to the jurisdiction of the courts of
78 West Virginia and the service of process pursuant to
79 section one hundred thirty-seven, article two, chapter
80 forty-six-a and section thirty-three, article three,
81 chapter fifty-six of this code.

§31-17-5. Refusal or issuance of license.

1 (a) Upon an applicant's full compliance with the
2 provisions of section four of this article, the commis-
3 sioner shall investigate the relevant facts with regard to
4 the applicant and his or her application for a lender's or
5 broker's license, as the case may be. Upon the basis of
6 the application and all other information before him or
7 her, the commissioner shall make and enter an order
8 denying the application and refusing the license sought
9 if the commissioner finds that:

10 (1) The applicant does not have available the net assets

11 required by the provisions of section four of this article;

12 (2) The applicant (individually, if an individual, or the
13 partners, if a partnership, or the officers and directors,
14 if a corporation) is of such character and reputation as
15 reasonably to warrant the belief that the business will
16 not be operated lawfully and properly in accordance
17 with the provisions of this article;

18 (3) The applicant has habitually defaulted on financial
19 obligations; or

20 (4) The applicant has done any act or has failed or
21 refused to perform any duty or obligation for which the
22 license sought could be suspended or revoked were it
23 then issued and outstanding.

24 Otherwise, the commissioner shall issue to the appli-
25 cant a lender's or broker's license which shall entitle the
26 applicant to engage in the business of lender or broker,
27 as the case may be, during the period, unless sooner
28 suspended or revoked, for which the license is issued.

29 (b) Every application for a lender's or broker's license
30 shall be passed upon and the license issued or refused
31 within forty-five days after the applicant therefor has
32 fully complied with the provisions of section four of this
33 article. Under no circumstances whatever shall the same
34 person hold both a lender's and a broker's license.
35 Whenever an application for a lender's or broker's
36 license is denied and the license sought is refused, which
37 refusal has become final, the commissioner shall retain
38 the investigation fee or fees but shall return the license
39 fee to the applicant.

§31-17-6. Minimum net assets to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.

1 At all times, a licensee shall: (1) Have available the net
2 assets required by the provisions of section four of this
3 article; (2) keep the bond required by said section in full

4 force and effect; and (3) if the licensee be a foreign
5 corporation, remain qualified to hold property and
6 transact business in this state.

**§31-17-8. Maximum period of loan; maximum interest and
charge or charges; insurance; other prohibi-
tions.**

1 (a) The maximum rate of finance charges and maxi-
2 mum total additional charges on or in connection with
3 any such secondary mortgage loan shall be as follows:

4 (1) The maximum rate of finance charge shall not
5 exceed eighteen percent per year on the unpaid balance
6 of the amount financed: *Provided*, That the borrower
7 shall have the right to prepay his or her debt in whole or
8 in part at any time and shall receive a rebate for any
9 unearned finance charge, exclusive of any points,
10 investigation fees and loan origination fees, which rebate
11 shall be computed in accordance with section one
12 hundred eleven, article three, chapter forty-six-a of this
13 code: *Provided, however*, That the sum of any points,
14 investigation fees and loan origination fees charged may
15 not exceed five percent of the amount financed;

16 (2) A secondary mortgage loan shall be payable over a
17 period not to exceed sixty months. This sixty-month
18 maximum loan period is temporarily extended, as of the
19 effective date of this section, to one hundred twenty
20 months until the first day of July, two thousand, at
21 which time it reverts to the sixty-month maximum loan
22 limit time period. The commissioner shall report to the
23 Legislature by the first day of July, one thousand nine
24 hundred ninety-nine, on the impact of this extended loan
25 time period upon the citizens of this state. The report
26 shall include analysis of the impact of this loan period
27 extension on the secondary mortgage industry in this
28 state, impacts of this extension on various socio-eco-
29 nomic classes of citizens of this state, statistics regarding
30 the number of homes which have been foreclosed upon
31 based on this extension and the effect of this extension
32 to any other citizens of this state. The commissioner may

33 require any licensee to provide the commissioner with
34 any information necessary to make this report;

35 (3) The total of additional charges as permitted by this
36 section and by section one hundred nine, article three,
37 chapter forty-six-a of this code, excluding official fees
38 and taxes, and insurance, may equal, but shall not be in
39 excess of, ten percent of the principal sum: *Provided*,
40 That where the principal sum at the inception of the
41 secondary mortgage loan is one thousand five hundred
42 dollars or less, the total additional charge or charges,
43 excluding official fees, taxes and insurance, may exceed
44 said ten percent, but shall not be in excess of one hun-
45 dred fifty dollars: *Provided, however*, That no additional
46 charges other than official fees, taxes and hazard insur-
47 ance may be required by the same or affiliated lender
48 more often than once each twenty-four months by
49 renewal of a secondary mortgage loan or an additional
50 secondary mortgage loan secured by the same;

51 (4) Where loan origination fees, investigation fees or
52 points have been charged by the licensee, such fees may
53 not be imposed again by the same or affiliated lender in
54 any refinancing of that loan or any additional loan on
55 that property made within twenty-four months thereof,
56 unless these earlier charges have been rebated by
57 payment or credit to the consumer under the actuarial
58 method, or the total of the earlier and current charges
59 does not exceed the five percent amount.

60 (b) Notwithstanding the provisions of subsection (a) of
61 this section, a delinquent or "late charge" may be
62 charged on any installment made ten or more days after
63 the regularly scheduled due date in accordance with
64 section one hundred twelve or section one hundred
65 thirteen, article three, chapter forty-six-a of this code,
66 whichever is applicable. The charge may be made only
67 once on any one installment during the term of the
68 secondary mortgage loan.

69 (c) Hazard insurance may be required by the lender of
70 the borrower, as provided in section one hundred nine,

71 article three, chapter forty-six-a of this code. Decreasing
72 term life insurance, in an amount not exceeding the
73 amount of the secondary mortgage loan and for a period
74 not exceeding the term of the loan, and accident and
75 health insurance in an amount sufficient to make the
76 monthly payments due on said loan in the event of the
77 disability of the borrower and for a period not exceeding
78 the life of said loan, may also be offered by the lender to
79 the borrower and the premium therefor may be financed.
80 The charges for any insurance shall not exceed the
81 standard rate approved by the insurance commissioner
82 for such insurance. Proof of all insurance in connection
83 with secondary mortgage loans subject to this article
84 shall be furnished to the borrower within thirty days
85 from and after the date of application therefor by said
86 borrower.

87 (d) No application fee may be allowed whether or not
88 the secondary mortgage loan is consummated; however,
89 the borrower may be required to reimburse the lender
90 for actual expenses incurred by the lender after accep-
91 tance and approval of a secondary mortgage loan pro-
92 posal made in accordance with the provisions of this
93 article which is not consummated because of:

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

95 (2) The borrower's false or fraudulent representation of
96 a material fact which prevents closing of said loan as
97 proposed.

98 (e) No licensee shall make, offer to make, accept or
99 offer to accept, any secondary mortgage loan except on
100 the terms and conditions authorized in this article.

101 (f) No licensee shall induce or permit any husband and
102 wife, jointly and severally, to become obligated to the
103 licensee under this article, directly or contingently, or
104 both, under more than one secondary mortgage loan at
105 the same time for the purpose or with the result of
106 obtaining greater charges than would otherwise be
107 permitted under the provisions of this article.

108 (g) No instrument evidencing or securing a secondary
109 mortgage loan shall contain:

110 (1) Any acceleration clause under which any part or all
111 of the unpaid balance of the obligation not yet matured
112 may be declared due and payable because the holder
113 deems himself to be insecure;

114 (2) Any power of attorney to confess judgment or any
115 other power of attorney;

116 (3) Any provision whereby the borrower waives any
117 rights accruing to him under the provisions of this
118 article;

119 (4) Any requirement that more than one installment be
120 payable in any one installment period, or that the
121 amount of any installment be greater or less than that of
122 any other installment, except for the final installment
123 which may be in a lesser amount, or unless the loan is
124 structured as a revolving line of credit having no set
125 final payment date; or

126 (5) Any assignment of or order for the payment of any
127 salary, wages, commissions or other compensation for
128 services, or any part thereof, earned or to be earned.

129 (h) No broker licensee shall charge a borrower or
130 receive from a borrower money or other valuable consid-
131 eration before completing performance of all services the
132 broker has agreed to perform for the borrower, unless
133 the licensee also registers and complies with all require-
134 ments set forth for credit service organizations in article
135 six-c, chapter forty-six-a of this code, including all
136 additional bonding requirements as may be established
137 therein.

138 (i) No lender licensee shall make revolving loans
139 secured by a secondary mortgage lien for the retail
140 purchase of consumer goods and services by use of a
141 lender credit card.

§31-17-9. Disclosure; closing statements; other records required.

1 (a) Any licensee or person making on his own behalf, or
2 as agent, broker or in other representative capacity on
3 behalf of any other person, a secondary mortgage loan,
4 whether lawfully or unlawfully, shall at the time of the
5 closing furnish to the borrower a complete and itemized
6 closing statement which shall show in detail:

7 (1) The amount and date of the note or secondary
8 mortgage loan contract and the date of maturity;

9 (2) The nature of the security;

10 (3) The finance charge rate per annum and the itemized
11 amount of finance charges and additional charges;

12 (4) The amount financed and total of payments;

13 (5) Disposition of the principal;

14 (6) A description of the payment schedule;

15 (7) The terms on which additional advances, if any, will
16 be made;

17 (8) The charge to be imposed for past due installments;

18 (9) A description and the cost of insurance required by
19 the lender or purchased by the borrower in connection
20 with the secondary mortgage loan;

21 (10) The name and address of the borrower and of the
22 lender; and

23 (11) That the borrower may prepay the secondary
24 mortgage loan in whole or in part on any installment
25 date, and that the borrower will receive a rebate in full
26 for any unearned finance charge.

27 Such detailed closing statement shall be signed by the
28 lender or his representative, and a completed and signed
29 copy thereof shall be retained by the lender and made
30 available at all reasonable times to the borrower, the
31 borrower's successor in interest to the residential
32 property, or the authorized agent of the borrower or the
33 borrower's successor, until the time as the indebtedness
34 shall be satisfied in full.

35 The commissioner may, from time to time, by rules
36 prescribe additional information to be included in a
37 closing statement.

38 (b) Upon written request from the borrower, the holder
39 of a secondary mortgage loan instrument shall deliver to
40 the borrower, within ten days from and after receipt of
41 the written request, a statement of the borrower's
42 account showing the date and amount of all payments
43 made or credited to the account and the total unpaid
44 balance. Not more than two statements shall be re-
45 quested in any twelve-month period.

46 (c) Upon satisfaction of a secondary mortgage loan
47 obligation in full, the holder of the instrument evidenc-
48 ing or securing the obligation shall deliver to the bor-
49 rower a recordable release and all writings signed by the
50 borrower which were incident to applying for and
51 obtaining the secondary mortgage loan.

§31-17-10. Advertising requirements.

1 It shall be unlawful and an unfair trade practice for
2 any person to cause to be placed before the public in this
3 state, directly or indirectly, any false, misleading or
4 deceptive advertising matter pertaining to secondary
5 mortgage loans or the availability thereof: *Provided,*
6 That this section shall not apply to the owner, publisher,
7 operator or employees of any publication or radio or
8 television station which disseminates such advertising
9 matter without actual knowledge of the false or mislead-
10 ing character thereof.

**§31-17-11. Records and reports; examination of records;
analysis.**

1 (a) Every licensee shall maintain at his or her place of
2 business in this state, if any, or if he or she has no place
3 of business in this state at his or her principal place of
4 business outside this state, such books, accounts and
5 records relating to all transactions within this article as
6 are necessary to enable the commissioner to enforce the
7 provisions of this article. All the books, accounts and

8 records shall be preserved, exhibited to the commis-
9 sioner and kept available as provided herein for the
10 reasonable period of time as the commissioner may by
11 rules require. The commissioner is hereby authorized to
12 prescribe by rules the minimum information to be shown
13 in the books, accounts and records.

14 (b) Each licensee shall file with the commissioner on or
15 before the fifteenth day of April of each year a report
16 under oath or affirmation concerning his or her business
17 and operations in this state for the preceding license year
18 in the form prescribed by the commissioner, which shall
19 show the annual volume and outstanding amounts of
20 secondary mortgage loans, the classification of the
21 secondary mortgage loans by size and by security, and
22 the gross income from, and expenses properly chargeable
23 to, such secondary mortgage loans.

24 (c) The commissioner may, at his or her discretion,
25 make or cause to be made an examination of the books,
26 accounts and records of every licensee pertaining to
27 secondary mortgage loans made in this state under the
28 provisions of this article, for the purpose of determining
29 whether each licensee is complying with the provisions
30 hereof and for the purpose of verifying each licensee's
31 annual report. If the examination is made outside this
32 state, the licensee shall pay the cost thereof in like
33 manner as applicants are required to pay the cost of
34 investigations outside this state.

35 (d) The commissioner shall publish annually an analy-
36 sis of the information furnished in accordance with the
37 provisions of subsection (b) of this section, but the
38 individual reports shall not be public records and shall
39 not be open to public inspection.

**§31-17-12. Grounds for suspension or revocation of license;
suspension and revocation generally; rein-
statement or new license.**

1 (a) The commissioner may suspend or revoke any
2 license issued hereunder if he or she finds that the

3 licensee and/or any owner, director, officer, member,
4 partner, stockholder, employee or agent of such licensee:

5 (1) Has knowingly violated any provision of this article
6 or any order, decision or rule of the commissioner
7 lawfully made pursuant to the authority of this article;
8 or

9 (2) Has knowingly made any material misstatement in
10 the application for such license; or

11 (3) Does not have available the net assets required by
12 the provisions of section four of this article; or

13 (4) Has failed or refused to keep the bond required by
14 section four of this article in full force and effect; or

15 (5) In the case of a foreign corporation, does not remain
16 qualified to do business in this state; or

17 (6) Has committed any fraud or engaged in any dishon-
18 est activities with respect to such secondary mortgage
19 loan business in this state, or failed to disclose any of the
20 material particulars of any secondary mortgage loan
21 transaction in this state to anyone entitled to the infor-
22 mation; or

23 (7) Has otherwise demonstrated bad faith, dishonesty
24 or any other quality indicating that the business of the
25 licensee in this state has not been or will not be con-
26 ducted honestly or fairly within the purpose of this
27 article. It shall be a demonstration of bad faith and an
28 unfair or deceptive act or practice to engage in a pattern
29 of making loans where the consumer has insufficient
30 sources of income to timely repay the debt, and the
31 lender had the primary intent to acquire the property
32 upon default rather than to derive profit from the loan.
33 This section shall not limit any right the consumer may
34 have to bring an action for a violation of section one
35 hundred four, article six, chapter forty six-a of this code.

36 The commissioner may also suspend or revoke the
37 license of a licensee if he or she finds the existence of
38 any ground upon which the license could have been

39 refused, or any ground which would be cause for refus-
40 ing a license to such licensee were he then applying for
41 the same. The commissioner may also suspend or revoke
42 the license of a licensee pursuant to his or her authority
43 under section thirteen, article two, chapter thirty-one-a
44 of this code in an individual case.

45 (b) The suspension or revocation of the license of any
46 licensee shall not impair or affect the obligation of any
47 preexisting lawful secondary mortgage loan between
48 such licensee and any obligor.

49 (c) The commissioner may reinstate a suspended
50 license, or issue a new license to a licensee whose license
51 has been revoked, if the grounds upon which any such
52 license was suspended or revoked have been eliminated
53 or corrected and the commissioner is satisfied that the
54 grounds are not likely to recur.

**§31-17-13. Notice of refusal, or suspension or revocation, of
license; relinquishing license.**

1 (a) Whenever the commissioner shall refuse to issue a
2 license, or shall suspend or revoke a license, he shall
3 make and enter an order to that effect and shall cause a
4 copy of such order to be served in person or by certified
5 mail, return receipt requested, or in any other manner in
6 which process in a civil action in this state may be
7 served, on the applicant or licensee, as the case may be.

8 (b) Whenever a license is suspended or revoked, the
9 commissioner shall in the order of suspension or revoca-
10 tion direct the licensee to return to the commissioner its
11 license. It shall be the duty of the licensee to comply with
12 any such order: (i) Immediately if the license were
13 suspended either following a hearing or for failure to
14 keep the bond required by the provisions of section four
15 of this article in full force and effect; or otherwise (ii)
16 following expiration of the period provided in section
17 fourteen of this article in which such licensee, if not
18 previously provided the opportunity to a hearing on the
19 matter, may demand a hearing before the commissioner

20 without such demand having been timely made.

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

1 (a) Any applicant or licensee, as the case may be,
2 adversely affected by an order made and entered by the
3 commissioner in accordance with the provisions of
4 section thirteen of this article, if not previously provided
5 the opportunity to a hearing on the matter, may in
6 writing demand a hearing before the commissioner. The
7 written demand for a hearing must be filed with the
8 commissioner within thirty days after the date upon
9 which the applicant or licensee was served with a copy
10 of such order. The timely filing of a written demand for
11 hearing shall stay or suspend execution of the order in
12 question, pending a final determination, except for an
13 order suspending a license for failure of the licensee to
14 maintain required by section four of this article in full
15 force and effect. If a written demand is timely filed as
16 aforesaid, the aggrieved party shall be entitled to a
17 hearing as a matter of right.

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18 (b) All of the pertinent provisions of article five,
19 chapter twenty-nine-a of this code shall apply to and
20 govern the hearing and the administrative procedures in
21 connection with and following such hearing, with like
22 effect as if the provisions of said article were set forth in
23 extenso in this subsection.

24 (c) For the purpose of conducting any such hearing
25 hereunder, the commissioner shall have the power and
26 authority to issue subpoenas and subpoenas duces
27 tecum, in accordance with the provisions of section one,
28 article five, chapter twenty-nine-a of this code. All
29 subpoenas and subpoenas duces tecum shall be issued
30 and served in the manner, within the time and for the
31 fees and shall be enforced, as specified in said section,
32 and all of the said section provisions dealing with
33 subpoenas and subpoenas duces tecum shall apply to
34 subpoenas and subpoenas duces tecum issued for the
35 purpose of a hearing hereunder.

36 (d) Any such hearing shall be held within twenty days
37 after the date upon which the commissioner received the
38 timely written demand therefor, unless there is a post-
39 ponement or continuance. The commissioner may
40 postpone or continue any hearing on his own motion, or
41 for good cause shown upon the application of the ag-
42 grieved party. At any such hearing, the aggrieved party
43 may represent himself or be represented by any
44 attorney-at-law admitted to practice before any circuit
45 court of this state.

46 (e) After such hearing and consideration of all of the
47 testimony, evidence and record in the case, the commis-
48 sioner shall make and enter an order affirming, modify-
49 ing or vacating his earlier order, or shall make and enter
50 such order as is deemed appropriate, meet and proper.
51 Such order shall be accompanied by findings of fact and
52 conclusions of law as specified in section three, article
53 five, chapter twenty-nine-a of this code, and a copy of
54 such order and accompanying findings and conclusions
55 shall be served upon the aggrieved party and his attorney
56 of record, if any, in person or by certified mail, return
57 receipt requested, or in any other manner in which
58 process in a civil action in this state may be served. The
59 order of the commissioner shall be final unless vacated
60 or modified on judicial review thereof in accordance
61 with the provisions of section fifteen of this article.

§31-17-15. Judicial review.

1 (a) Any person adversely affected by a final order made
2 and entered by the commissioner after hearing held in
3 accordance with the provisions of section fourteen of this
4 article is entitled to judicial review thereof. All of the
5 pertinent provisions of section four, article five, chapter
6 twenty-nine-a of this code shall apply to and govern
7 such review with like effect as if the provisions of said
8 section were set forth in extenso in this section.

9 (b) The judgment of the circuit court shall be final
10 unless reversed, vacated or modified on appeal to the
11 supreme court of appeals in accordance with the provi-

12 sions of section one, article six, chapter twenty-nine-a of
13 this code.

14 (c) Legal counsel and services for the commissioner in
15 all appeal proceedings in any circuit court and the
16 supreme court of appeals shall upon request be provided
17 by the attorney general or his assistants, all without
18 additional compensation.

§31-17-16. Actions to enjoin violations.

1 (a) Whenever it appears to the commissioner that any
2 person has been or is violating or is about to violate any
3 provision of this article, any rules of the commissioner or
4 any final order of the commissioner, the commissioner
5 may apply in the name of the state, to the circuit court of
6 the county in which the violation or violations, or any
7 part thereof, has occurred, is occurring or is about to
8 occur, or the judge thereof in vacation, for an injunction
9 against such person and any other persons who have
10 been, are or are about to be, involved in, or in any way
11 participating in, any practices, acts or omissions, so in
12 violation, enjoining such person or persons from any
13 such violation or violations. Such application may be
14 made and prosecuted to conclusion whether or not any
15 such violation or violations have resulted or shall result
16 in prosecution or conviction under the provisions of
17 section eighteen of this article.

18 (b) Upon application by the commissioner as aforesaid,
19 the circuit courts of this state may by mandatory or
20 prohibitory injunction compel compliance with the
21 provisions of this article, any rules of the commissioner
22 and all final orders of the commissioner. The court may
23 issue a temporary injunction in any case pending a
24 decision on the merits of any application filed.

25 (c) The judgment of the circuit court upon any applica-
26 tion permitted by the provisions of this section shall be
27 final unless reversed, vacated or modified on appeal to
28 the supreme court of appeals. Any such appeal shall be
29 sought in the manner and within the time provided by

30 law for appeals from circuit courts in other civil cases.

31 (d) The commissioner shall upon request be repre-
 32 sented in all such proceedings by the attorney general or
 33 his assistants, all without additional compensation.

§31-17-18. Violations and penalties.

1 (a) Any person, or any member, officer, director, agent
 2 or employee of such person, who violates or participates
 3 in the violation of this article shall be guilty of a misde-
 4 meanor, and, upon conviction thereof, shall be fined not
 5 more than five hundred dollars, or imprisoned in a
 6 county or regional jail for not more than six months, or
 7 both fined and imprisoned, at the discretion of the court.

8 (b) The penalties and remedies embodied in this article
 9 are not exclusive, but are cumulative with other applica-
 10 ble provisions of this code, including, but not limited to,
 11 the consumer protection laws in chapter forty-six-a of
 12 this code.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.

**§31A-2-5. Certificate or license to engage in business; filing
 of amendments to charter; bylaws and
 foreign statutes.**

1 (a) No person shall engage or continue in the business
 2 of a financial institution in this state without a license or
 3 certificate to do so issued in accordance with this
 4 section, or other applicable law, which license or certifi-
 5 cate remains unsuspended, unexpired and unrevoked
 6 except that a corporation which proposes to apply for
 7 the license or certificate may secure its charter, adopt
 8 bylaws, elect its directors and officers and perfect its
 9 organization.

10 (b) No person shall operate an office in West Virginia
 11 which regularly makes consumer loans in this state other
 12 than first mortgage loans unless they are a financial
 13 institution, licensed pawnbroker or a federally insured
 14 depository institution authorized and qualified to do

15 business in this state. The purchase of consumer paper
16 does not constitute the making of consumer loans for the
17 purposes of this subsection, unless the purchase is made
18 by a business affiliated with the credit provider pursuant
19 to a standing arrangement.

20 (c) Application for the license or certificate shall be
21 upon the forms and contain such information as the
22 commissioner may prescribe. In connection with the
23 applications every corporate financial institution shall
24 file a certified copy of its charter and bylaws, a state-
25 ment as to the amount of capital that has been sub-
26 scribed and paid in and a statement of its financial
27 condition duly verified under oath by its president or
28 vice president and its cashier or secretary as the case
29 may be and every financial institution other than a
30 corporation shall file a verified statement of its financial
31 condition.

32 (d) If the application be that of a banking institution,
33 the commissioner of banking shall examine the informa-
34 tion, documents and statements submitted and, if he or
35 she finds that the banking institution has adopted
36 bylaws which provide practical, safe, just and equitable
37 rules and methods for the management of its business
38 and it has complied in all respects with the provisions of
39 this chapter and other applicable laws, he or she shall
40 issue to it a certificate or license permitting it to engage
41 in business. If the application be that of a financial
42 institution other than a banking institution, the commis-
43 sioner of banking shall examine the information, docu-
44 ments and statements submitted, and, if he or she finds
45 that the financial institution has adequate resources for
46 the proposed business and has provided practical, safe,
47 just and equitable rules and methods for the manage-
48 ment of its business, and it has complied in all respects
49 with the provisions of this chapter and other applicable
50 laws, and that the public convenience and advantage will
51 be promoted by the issuance of a certificate or license
52 thereto, he or she shall issue to it a certificate or license
53 permitting it to engage in business: *Provided*, That any

54 supervised lender which is operating in good standing in
55 accordance with the provisions of article four, chapter
56 forty-six-a of this code shall be presumed to have
57 established that the public convenience and advantage
58 will be promoted in regard to its application for a
59 certificate of authority to operate as an industrial loan
60 company as defined in article seven, chapter thirty-one
61 of this code in the same location for which it is licensed
62 as a supervised lender. The certificate or license shall be
63 preserved and the original or copy thereof displayed in
64 all the West Virginia places of business of the banking or
65 other financial institution.

66 (e) In addition to the requirements of subsections (b)
67 and (c) of this section, every foreign corporation applying
68 for a license or certificate to engage in the business of a
69 financial institution in this state shall file with the
70 commissioner of banking a copy of the bylaws under
71 which it operates, together with a legal citation to the
72 statutes of the jurisdiction where it is organized which
73 pertain to its organization and powers and the conduct
74 of its business. The commissioner shall examine the
75 information, documents and statements submitted by the
76 foreign corporation and if he or she finds that it provides
77 practical, safe, just and equitable rules and methods for
78 the management of the business of the corporation, that
79 it has adequate resources for the proposed business and
80 it has complied in all respects with the provisions of this
81 chapter and other applicable laws, and that the public
82 convenience and advantage will be promoted by the
83 issuance of a license or certificate thereto, he or she shall
84 issue to the corporation a certificate or license permit-
85 ting it to engage in business in this state, which certifi-
86 cate or license shall authorize the corporation to engage
87 in the business of the type of financial institution
88 specified therein, until the thirtieth day of the following
89 June. Thereafter a new certificate or license shall be
90 secured annually by the foreign corporation, except
91 where annual renewal of the license or certificate is
92 specifically not required for the type of institution

93 involved. The fee for the original and each additional
94 license or certificate issued to a foreign corporation shall
95 be one hundred dollars, unless otherwise provided by
96 statute. A verified statement of the financial condition
97 of every such foreign corporation shall be filed with the
98 commissioner before the issuance of each annual certifi-
99 cate or license. The certificate or license shall be pre-
100 served and the original or copy thereof displayed in the
101 West Virginia place of business of the corporation.

102 (f) Unless the institution is a federally insured deposi-
103 tory institution or it is otherwise provided for by statute,
104 a new certificate or license shall be secured annually by
105 all domestic state financial institutions, and the fee for
106 the original and each additional license or certificate
107 shall be one hundred dollars.

108 (g) No amendment of the charter or bylaws of any
109 domestic or foreign corporation engaging in business in
110 this state as a financial institution shall become effective
111 until the proposed change shall have been submitted to
112 and approved by the commissioner of banking; but, if the
113 commissioner does not disapprove the proposed change
114 within twenty days after it is received by him or her, it
115 shall be deemed to have been approved.

116 (h) Nothing contained in this code shall authorize any
117 person to engage in the banking business in this state
118 except corporations chartered to conduct a banking
119 business under the laws of West Virginia and which hold
120 a license or certificate to do so issued under this section
121 or associations authorized to conduct a banking business
122 in West Virginia under the laws of the United States and
123 having their principal place of business in this state.

**§31A-2-6. Commissioner's examinations of financial institu-
tion; reports; records; communications from
commissioner to institution; examination by
federal agency in lieu of commissioner's
examination.**

1 The commissioner of banking shall make, at least once

2 every eighteen months, a thorough examination of all the
3 books, accounts, records and papers of every depository
4 financial institution. He or she shall carefully examine
5 all of the assets of each such institution, including its
6 notes, drafts, checks, mortgages, securities deposited to
7 assure the payment of debts unto it, and all papers,
8 documents and records showing, or in any manner
9 relating to, its business affairs, and shall ascertain the
10 full amount and the nature in detail of all of its assets
11 and liabilities. The commissioner may also, at his or her
12 discretion, make or cause to be made, an annual or
13 periodic examination of the books, accounts, records and
14 papers of other financial institutions under his or her
15 supervision for the purposes of determining compliance
16 with applicable consumer and credit lending laws, and
17 verifying information provided in any license application
18 or annual report submitted to the commissioner. The
19 commissioner may also make such examination of any
20 subsidiaries or affiliates of a financial institution as he
21 or she may deem necessary to ascertain the financial
22 condition of the financial institution, the relations
23 between the financial institution and its subsidiaries and
24 affiliates and the effect of the relations upon the affairs
25 of such financial institution. A full report of every
26 examination shall be made and filed and preserved in the
27 office of the commissioner and a copy thereof forthwith
28 mailed to the institution examined. Every institution
29 shall retain all of its records of final entry for the period
30 of time as required in section thirty-five, article four of
31 this chapter for banking institutions. Unless otherwise
32 covered by assessments or a specific provision of this
33 code, the cost of examinations made pursuant to this
34 section shall be born by the financial institution at a rate
35 of fifty dollars per each examiner hour expended.

36 Every official communication from the commissioner
37 to any institution, or to any officer thereof, relating to an
38 examination or an investigation of the affairs of the
39 institution conducted by the commissioner or containing
40 suggestions or recommendations as to the manner of

41 conducting the business of the institution, shall be read
42 to the board of directors at the next meeting after the
43 receipt thereof, and the president, or other executive
44 officer, of the institution shall forthwith notify the
45 commissioner in writing of the presentation and reading
46 of the communication and of any action taken thereon by
47 the institution.

48 The commissioner of banking, in his or her discretion,
49 may accept a copy of a reasonably current examination
50 of any banking institution made by the federal deposit
51 insurance corporation or the federal reserve system in
52 lieu of an examination of the banking institution re-
53 quired or authorized to be made by the laws of this state,
54 and the commissioner may furnish to the federal deposit
55 insurance corporation or the federal reserve system or to
56 any official or examiner thereof, any copy or copies of
57 the commissioner's examinations of and reports on the
58 banking institutions; but nothing herein shall be con-
59 strued to limit the duty and responsibility of banking
60 institutions to comply with all provisions of law relating
61 to examinations and reports, nor to limit the powers and
62 authority of the commissioner of banking with reference
63 to examinations and reports under existing laws.

**§31A-2-7. Duties of officers, employees, etc., of financial
institution in connection with examination;
examination under oath; offenses and penal-
ties.**

1 All officers, directors, employees and other persons
2 connected with any financial institution, upon request of
3 the commissioner of banking, or his or her duly autho-
4 rized representative, shall furnish and give full access to
5 all of the books, papers, notes, bills and other evidences
6 of debts due to the institution; produce and furnish all
7 documents, records, writings and papers relating to the
8 business of the institution which the commissioner is
9 authorized to examine; disclose fully, accurately and in
10 detail all of the debts and liabilities of the institution;
11 and furnish the clerical aid and assistance as may be

12 required in the performance of the commissioner's duties
13 as provided by law. The commissioner or his or her
14 representative, as the case may be, shall have the right
15 and authority to administer oaths and to examine under
16 oath each officer, director, employee or other person
17 connected with the institution concerning any matter
18 and thing pertaining to the business and condition of the
19 institution.

20 Any officer, director, employee or other person con-
21 nected with any such institution who willfully fails or
22 refuses to so furnish the documents, papers, materials or
23 information as herein required or who willfully fails to
24 discharge any other duty or obligation as herein pro-
25 vided shall be guilty of a misdemeanor, and, upon
26 conviction thereof, shall be subject to the penalties
27 provided in section fifteen, article eight of this chapter.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

- 1 (a) This chapter does not apply to:
 - 2 (1) Extensions of credit to government or governmental
3 agencies or instrumentalities;
 - 4 (2) The sale of insurance by an insurer, except as
5 otherwise provided in this chapter;
 - 6 (3) Transactions under public utility or common carrier
7 tariffs if a subdivision or agency of this state or of the
8 United States regulates the charges for the services
9 involved, the charges for delayed payment, and any
10 discount allowed for early payment; or
 - 11 (4) Licensed pawnbrokers.
- 12 (b) Secondary mortgage lender and broker licensees
13 are excluded from the provisions of this chapter to the
14 extent those provisions directly conflict with any section
15 of article seventeen, chapter thirty-one of this code.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Candy Schoover
.....
Chairman Senate Committee

Ludy Seaint
.....
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Harrell Adams
.....
Clerk of the Senate

Bryan M. King
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Paul Abner
.....
Speaker House of Delegates

The within ^{is approved} this the ^{16th}
day of ^{April}, 1996.

Gaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/29/96

Time 9:56 am