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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

Committee Substitute for

SENATE BILL NO. 4/8

(By Senators Tomblin, Mr. President, and Je
Sprouse, By Request of the Executive)

PASSED April 13, 2001

In Effect July 1, 2001 ~~Passage~~

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 418

(SENATORS MCCABE AND KESSLER, *original sponsors*)

[Passed April 13, 2001; to take effect July 1, 2001.]

AN ACT to amend and reenact sections one, two, four, five, six, seven, eight, nine, twelve and fourteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of residential mortgage lenders, brokers and servicers; defining terms; amending licensure exemptions; providing that licensee bonds are for the benefit of consumers; extending the time to pass upon a license application to ninety days; allowing the commissioner to retain fees to cover administrative costs in the event an application is denied; increasing license fee; imposing a per-loan fee; increasing bond for certain brokers; requiring certain disclosures and recordkeeping; requiring continuing education for loan originators employed by licensed brokers; requiring applicants to pay the cost of fingerprint processing; and authorizing the commissioner to impose fines and waive certain license application requirements for nonprofits.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, six, seven, eight, nine, twelve and fourteen, article seventeen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, 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 (1) "Primary mortgage loan" means a consumer loan
3 made to an individual which is secured, in whole or in
4 part, by a primary mortgage or deed of trust upon any
5 interest in real property used as an owner-occupied
6 residential dwelling with accommodations for not more
7 than four families;

8 (2) "Subordinate mortgage loan" means a consumer loan
9 made to an individual which is secured, in whole or in
10 part, by a mortgage or deed of trust upon any interest in
11 real property used as an owner-occupied residential
12 dwelling with accommodations for not more than four
13 families, which property is subject to the lien of one or
14 more prior recorded mortgages or deeds of trust;

15 (3) "Person" means an individual, partnership, associa-
16 tion, trust, corporation or any other legal entity, or any
17 combination thereof;

18 (4) "Lender" means any person who makes or offers to
19 make or accepts or offers to accept or purchases or services
20 any primary or subordinate mortgage loan in the regular
21 course of business. A person is considered to be acting in
22 the regular course of business if he or she makes or
23 accepts, or offers to make or accept, more than five
24 primary or subordinate mortgage loans in any one calen-
25 dar year;

26 (5) "Broker" means any person acting in the regular
27 course of business who, for a fee or commission or other

28 consideration, negotiates or arranges, or who offers to
29 negotiate or arrange, or originates, processes or assigns a
30 primary or subordinate mortgage loan between a lender
31 and a borrower. A person is considered to be acting in the
32 regular course of business if he or she negotiates or
33 arranges, or offers to negotiate or arrange, or originates,
34 processes, or assigns any primary or subordinate mortgage
35 loans in any one calendar year; or if he or she seeks to
36 charge a borrower or receive from a borrower money or
37 other valuable consideration in any primary or subordi-
38 nate mortgage transaction before completing performance
39 of all broker services that he or she has agreed to perform
40 for the borrower;

41 (6) "Brokerage fee" means the fee or commission or
42 other consideration charged by a broker for the services
43 described in subdivision (5) of this section;

44 (7) "Additional charges" means every type of charge
45 arising out of the making or acceptance of a primary or
46 subordinate mortgage loan, except finance charges,
47 including, but not limited to, official fees and taxes,
48 reasonable closing costs and certain documentary charges
49 and insurance premiums and other charges which defini-
50 tion is to be read in conjunction with and permitted by
51 section one hundred nine, article three, chapter forty-six-a
52 of this code;

53 (8) "Finance charge" means the sum of all interest and
54 similar charges payable directly or indirectly by the debtor
55 imposed or collected by the lender incident to the exten-
56 sion of credit as coextensive with the definition of "loan
57 finance charge" set forth in section one hundred two,
58 article one, chapter forty-six-a of this code;

59 (9) "Commissioner" means the commissioner of banking
60 of this state;

61 (10) "Applicant" means a person who has applied for a
62 lender's or broker's license;

63 (11) "Licensee" means any person duly licensed by the
64 commissioner under the provisions of this article as a
65 lender or broker;

66 (12) "Amount financed" means the total of the following
67 items to the extent that payment is deferred:

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

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

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

75 (i) Any applicable sales, use, privilege, excise or docu-
76 mentary stamp taxes;

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

79 (iii) Additional charges permitted by this article;

80 (13) "Affiliated" means persons under the same owner-
81 ship or management control. As to corporations, limited
82 liability companies or partnerships, where common owners
83 manage or control a majority of the stock, membership
84 interests or general partnership interests of one or more
85 such corporations, limited liability companies or partner-
86 ships, those persons are considered affiliated. In addition,
87 persons under the ownership or management control of the
88 members of an immediate family shall be considered
89 affiliated. For purposes of this section, "immediate
90 family" means mother, stepmother, father, stepfather,
91 sister, stepsister, brother, stepbrother, spouse, child and
92 grandchildren; and

93 (14) "Servicing" or "servicing a residential mortgage
94 loan" means through any medium or mode of communica-
95 tion the collection or remittance for, or the right or

96 obligation to collect or remit for another lender, note
97 owner or noteholder, payments of principal, interest,
98 including sales finance charges in a consumer credit sale,
99 and escrow items as insurance and taxes for property
100 subject to a residential mortgage loan.

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

1 (a) No person shall engage in this state in the business of
2 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 engage in business in this
6 state unless it is registered with the secretary of state to
7 transact business in this state.

8 (b) The provisions of this article do not apply to loans
9 made by the following:

10 (1) Federally insured depository institutions;

11 (2) Regulated consumer lender licensees;

12 (3) Insurance companies;

13 (4) Any other lender licensed by and under the regular
14 supervision and examination for consumer compliance of
15 any agency of the federal government;

16 (5) Any agency or instrumentality of this state, federal,
17 county or municipal government or on behalf of the
18 agency or instrumentality;

19 (6) By a nonprofit community development organization
20 making mortgage loans to promote home ownership or
21 improvements for the disadvantaged which loans are
22 subject to federal, state, county or municipal government
23 supervision and oversight; or

24 (7) Habitat for Humanity International, Inc. and its
25 affiliates providing low-income housing within this state.

26 Loans made subject to this exemption may be assigned,
27 transferred, sold or otherwise securitized to any person
28 and shall remain exempt from the provisions of this
29 article, except as to reporting requirements in the discre-
30 tion of the commissioner where the person is a licensee
31 under this article. Nothing herein shall prohibit a broker
32 licensed under this article from acting as broker of an
33 exempt loan and receiving compensation as permitted
34 under the provisions of this article.

35 (c) A person or entity designated in subsection (b) of this
36 section may take assignments of a primary or subordinate
37 mortgage loan from a licensed lender and the assignments
38 of said loans that they themselves could have lawfully
39 made as exempt from the provisions of this article under
40 this section do not make that person or entity subject to
41 the licensing, bonding, reporting or other provisions of this
42 article except as the defense or claim would be preserved
43 pursuant to section one hundred two, article two, chapter
44 forty-six-a of this code.

45 (d) The placement or sale for securitization of a primary
46 or subordinate mortgage loan into a secondary market by
47 a licensee may not subject the warehouser or final securiti-
48 zation holder or trustee to the provisions of this article:
49 *Provided*, That the warehouser, final securitization holder
50 or trustee under an arrangement is either a licensee, or
51 person or entity entitled to make exempt loans of that type
52 under this section, or the loan is held with right of recourse
53 to a licensee.

**§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals; waivers and reductions; per loan fee.**

1 (a) Application for a lender's or broker's license shall
2 each year be submitted in writing under oath, in the form
3 prescribed by the commissioner, and shall contain the full
4 name and address of the applicant and, if the applicant is
5 a partnership, limited liability company or association, of
6 every member thereof, and, if a corporation, of each

7 officer, director and owner of ten percent or more of the
8 capital stock thereof and further information as the
9 commissioner may reasonably require. Any application
10 shall also disclose the location at which the business of
11 lender or broker is to be conducted.

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

14 (1) If a foreign corporation, submit a certificate from the
15 secretary of state certifying that the applicant is registered
16 with the secretary of state to transact business in this
17 state;

18 (2) Submit proof that he or she has available for the
19 operation of the business at the location specified in the
20 application net worth of at least two hundred fifty thou-
21 sand dollars;

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

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

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

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

50 (1) If a foreign corporation, submit a certificate from the
51 secretary of state certifying that the applicant is registered
52 with the secretary of state to transact business in this
53 state;

54 (2) Submit proof that he or she has available for the
55 operation of the business at the location specified in the
56 application net worth of at least ten thousand dollars;

57 (3) File with the commissioner a bond in favor of the
58 state for the benefit of consumers in the amount of twenty-
59 five thousand dollars, in a form and with conditions as the
60 commissioner may prescribe, and executed by a surety
61 company authorized to do business in this state: *Provided,*
62 That the bond must be in the amount of fifty thousand
63 dollars before a broker may participate in a table-funded
64 residential mortgage loan;

65 (4) Pay to the commissioner a license fee of three
66 hundred fifty dollars plus the actual cost of fingerprint
67 processing; and

68 (5) Submit proof that the applicant is a business in good
69 standing in its state of incorporation, or if not a corpora-
70 tion, its state of business registration, and a full and
71 complete disclosure of any litigation or unresolved com-
72 plaint filed by a governmental authority or class action
73 lawsuit on behalf of consumers relating to the operation of
74 the license applicant.

75 (d) The aggregate liability of the surety on any bond
76 given pursuant to the provisions of this section shall in no
77 event exceed the amount of the bond.

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

85 (f) The commissioner may elect to reduce or waive the
86 application fees, bond amounts and net worth require-
87 ments imposed by this section for nonprofit corporations
88 whose residential mortgage lending or brokering activities
89 provide housing primarily to households or persons below
90 the HUD established median income for their area of
91 residence.

92 (g) Every licensee shall pay a fee of five dollars for each
93 residential mortgage loan originated, made or brokered in
94 a calendar year. This fee shall be paid semiannually to the
95 division of banking and remitted with the report required
96 pursuant to subsection (b), section eleven of this article for
97 loans made, brokered or originated during the last six
98 months of the previous calendar year and with the license
99 renewal application required pursuant to subsection (b),
100 section seven of this article for the loans made, brokered
101 or originated in the first six months of that calendar year.
102 In the event a licensee ceases operation, it shall remit any
103 fees due since the last reporting period when it relin-
104 quishes its license.

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

1 (a) Upon an applicant's full compliance with the provi-
2 sions of section four of this article, the commissioner shall
3 investigate the relevant facts with regard to the applicant
4 and his or her application for a lender's or broker's license,
5 as the case may be. Upon the basis of the application and

6 all other information before him or her, the commissioner
7 shall make and enter an order denying the application and
8 refusing the license sought if the commissioner finds that:

9 (1) The applicant does not have available the net worth
10 required by the provisions of section four of this article;

11 (2) The financial responsibility, character, reputation,
12 experience or general fitness of the applicant, including its
13 officers, directors, principals and employees, reasonably
14 warrants the belief that the business will not be operated
15 lawfully and properly in accordance with the provisions of
16 this article;

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

21 Otherwise, the commissioner shall issue to the applicant
22 a lender's or broker's license which shall entitle the
23 applicant to engage in the business of lender or broker, as
24 the case may be, during the period, unless sooner sus-
25 pended or revoked, for which the license is issued.

26 (b) Every application for a lender's or broker's license
27 shall be passed upon and the license issued or refused
28 within ninety days after the applicant therefor has fully
29 complied with the provisions of section four of this article.
30 Under no circumstances whatever shall a person or
31 licensee act as a broker and lender in the same transaction.
32 Whenever an application for a lender's or broker's license
33 is denied and the license sought is refused, which refusal
34 has become final, the commissioner shall retain all fees to
35 cover administrative costs of processing the broker or
36 lender application.

**§31-17-6. Minimum net worth 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 worth 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 corpo-
5 ration, remain qualified to transact business in this state
6 unless otherwise exempt.

**§31-17-7. Form of license; posting required; license not transfer-
able or assignable; license may not be franchised;
renewal of license.**

1 (a) It shall be stated on the license, whether it is a
2 lender's or broker's license, the location at which the
3 business is to be conducted and the full name of the
4 licensee. A broker's license shall be conspicuously posted
5 in the licensee's place of business in this state and a
6 lender's license shall be conspicuously posted in the
7 licensee's place of business if in this state. No license shall
8 be transferable or assignable. No licensee may offer a
9 franchise under that license to another person. The
10 commissioner may allow licensees to have branch offices
11 without requiring additional licenses provided the location
12 of all branch offices is registered with the division of
13 banking by the licensee. Whenever a licensee changes his
14 or her place of business to a location other than that set
15 forth in his or her license and branch registration, he or
16 she shall give written notice thirty days prior to such
17 change to the commissioner.

18 (b) Every lender's or broker's license shall, unless sooner
19 suspended or revoked, expire on the thirty-first day of
20 December of each year and any license may be renewed
21 each year in the same manner, for the same license fee or
22 fees specified above and upon the same basis as an original
23 license is issued in accordance with the provisions of
24 section five of this article. All applications for the renewal
25 of licenses shall be filed with the commissioner at least
26 ninety days before the expiration thereof.

27 (c) The amendments to this article in the year two
28 thousand are effective on and after the first day of July,
29 two thousand. Licenses previously issued and in effect on
30 the first day of July, two thousand, shall be extended for
31 one year and, unless sooner suspended or revoked, shall
32 expire on the thirty-first day of December, two thousand
33 one. Any person, not already licensed, who is operating as
34 a broker or lender on the first day of July, two thousand,
35 and who is registered with the secretary of state to do
36 business in the state, may file an application with the
37 commissioner on or before the first day of August, two
38 thousand. If issued, such licenses shall, unless sooner
39 suspended or revoked, expire on the thirty-first day of
40 December, two thousand one.

41 (d) Beginning with renewal applications in the year two
42 thousand two, a broker's license may not be renewed
43 unless that licensee's executive officer certifies to the
44 commissioner on the renewal application that every loan
45 originator employed by that licensed broker has received
46 at least seven hours of continuing education in the prior
47 year. The continuing education must be related to the laws
48 and regulations applicable to residential mortgage loan
49 origination. Both the course of instruction and the entity
50 providing such continuing education must receive prior
51 approval from the commissioner as satisfying the continu-
52 ing education requirement established herein before the
53 commissioner may accept a certification from a licensee.
54 The commissioner shall make available a list of entities
55 and courses that have been approved for continuing
56 education hours.

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

1 (a) The maximum rate of finance charges on or in
2 connection with any subordinate mortgage loan may not

3 exceed eighteen percent per year on the unpaid balance of
4 the amount financed.

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

10 (c) Except as provided by section one hundred nine,
11 article three, chapter forty-six-a of this code and by
12 subsection (g) of this section, no additional charges may be
13 made, nor may any charge permitted by this section be
14 assessed unless the loan is made.

15 (d) Where loan origination fees, investigation fees or
16 points have been charged by the licensee, the charges may
17 not be imposed again by the same or affiliated licensee in
18 any refinancing of that loan or any additional loan on that
19 property made within twenty-four months thereof, unless
20 the new loan has a reasonable, tangible net benefit to the
21 borrower considering all of the circumstances, including
22 the terms of both the new and the refinanced loans, the
23 cost of the new loan and the borrower's circumstances. The
24 licensee shall document this benefit in writing on a form
25 prescribed by the commissioner and maintain such docu-
26 mentation in the loan file. To the extent this subdivision
27 overrides the preemption on limiting points and other
28 charges on first lien residential mortgage loans contained
29 in the United States Depository Institutions Deregulation
30 and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a,
31 the state law limitations contained in this section shall
32 apply.

33 (e) Notwithstanding other provisions of this section, a
34 delinquent charge or "late charge" may be charged on any
35 installment made ten or more days after the regularly
36 scheduled due date in accordance with section one hun-
37 dred twelve or one hundred thirteen, article three, chapter
38 forty-six-a of this code, whichever is applicable. The

39 charge may be made only once on any one installment
40 during the term of the primary or subordinate mortgage
41 loan.

42 (f) Hazard insurance may be required by the lender and
43 other types of insurance may be offered as provided in
44 section one hundred nine, article three, chapter forty-six-a
45 of this code. The charges for any insurance shall not
46 exceed the standard rate approved by the insurance
47 commissioner for the insurance. Proof of all insurance in
48 connection with primary and subordinate mortgage loans
49 subject to this article shall be furnished to the borrower
50 within thirty days from and after the date of application
51 therefor by the borrower.

52 (g) Except for fees for services provided by unrelated
53 third parties for appraisals, inspections, title searches and
54 credit reports, no application fee may be allowed whether
55 or not the mortgage loan is consummated; however, the
56 borrower may be required to reimburse the licensee for
57 actual expenses incurred by the licensee in a purchase
58 money transaction after acceptance and approval of a
59 mortgage loan proposal made in accordance with the
60 provisions of this article which is not consummated
61 because of:

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

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

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

70 (i) No licensee shall induce or permit any borrower to
71 become obligated to the licensee under this article, directly
72 or contingently, or both, under more than one subordinate
73 mortgage loan at the same time for the purpose or with the

74 result of obtaining greater charges than would otherwise
75 be permitted under the provisions of this article.

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

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

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

82 (3) Any requirement that more than one installment be
83 payable in any one installment period, or that the amount
84 of any installment be greater or less than that of any other
85 installment, except for the final installment which may be
86 in a lesser amount, or unless the loan is structured as a
87 revolving line of credit having no set final payment date;

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

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

93 (6) Blank or blanks to be filled in after the consumma-
94 tion of the loan. A borrower must be given a copy of every
95 signed document executed by the borrower at the time of
96 closing.

97 (k) No licensee shall charge a borrower or receive from
98 a borrower money or other valuable consideration as
99 compensation before completing performance of all
100 services the licensee has agreed to perform for the bor-
101 rower unless the licensee also registers and complies with
102 all requirements set forth for credit service organizations
103 in article six-c, chapter forty-six-a of this code, including
104 all additional bonding requirements as may be established
105 therein.

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

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

113 (1) Collect a fee not disclosed to the borrower; collect
114 any attorney fee at closing in excess of the fee that has
115 been or will be remitted to the attorney; collect a fee for a
116 product or service where the product or service is not
117 actually provided; misrepresent the amount charged by or
118 paid to a third party for a product or service; or collect
119 duplicate fee or points to act as both broker and lender for
120 the same mortgage loan, however, fees and points may be
121 divided between the broker and the lender as they agree,
122 but may not exceed the total charges otherwise permitted
123 under this article: *Provided*, That the fact of any fee, point
124 or compensation is disclosed to the borrower consistent
125 with the solicitation representation made to the borrower;

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

132 (3) Make or assist in making any primary or subordinate
133 mortgage loan with the intent that the loan will not be
134 repaid and that the lender will obtain title to the property
135 through foreclosure: *Provided*, That this subdivision shall
136 not apply to reverse mortgages obtained under the provi-
137 sions of article twenty-four, chapter forty-seven of this
138 code;

139 (4) Require the borrower to pay, in addition to any
140 periodic interest, combined fees, compensation, yield
141 spread premium or points of any kind to the lender and

142 broker to arrange, originate, evaluate, maintain or service
143 a loan secured by any encumbrance on residential property
144 that exceed, in the aggregate, six percent of the loan
145 amount financed: *Provided*, That reasonable closing costs,
146 as defined in section one hundred two, article one, chapter
147 forty-six-a of this code, payable to unrelated third parties
148 may not be included within this limitation: *Provided*,
149 *however*, That no yield spread premium is permitted for
150 any loan for which the annual percentage rate exceeds
151 eighteen percent per year on the unpaid balance of the
152 amount financed: *Provided further*, That if no yield spread
153 premium is charged, the aggregate of periodic interest,
154 fees, compensation or points can be no greater than five
155 percent of the loan amount financed. The financing of the
156 fees and points are permissible and, where included as
157 part of the finance charge, does not constitute charging
158 interest on interest. To the extent that this section over-
159 rides the preemption on limiting points and other charges
160 on first lien residential mortgage loans contained in the
161 United States Depository Institutions Deregulation and
162 Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the
163 state law limitations contained in this section applies;

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

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

171 (7) Require terms of repayment which do not result in
172 continuous monthly reduction of the original principal
173 amount of the loan: *Provided*, That the provisions of this
174 subdivision may not apply to reverse mortgage loans
175 obtained under article twenty-four, chapter forty-seven of
176 this code, home equity, open-end lines of credit, bridge
177 loans used in connection with the purchase or construction

178 of a new residential dwelling or commercial loans for
179 multiple residential purchases;

180 (8) Secure a primary or subordinate mortgage loan in a
181 principal amount that, when added to the aggregate total
182 of the outstanding principal balances of all other primary
183 or subordinate mortgage loans secured by the same
184 property, exceeds the fair market value of the property on
185 the date that the latest mortgage loan is made. For
186 purposes of this paragraph, a broker or lender may rely
187 upon a bona fide written appraisal of the property made
188 by an independent third-party appraiser, or other evidence
189 of fair market value, if the broker or lender does not have
190 actual knowledge that the value is incorrect;

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

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

**§31-17-9. Disclosure; closing statements; other records required;
record-keeping requirements.**

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

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

10 (2) The nature of the security;

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

- 13 (4) The principal and total of payments;
- 14 (5) Disposition of the principal;
- 15 (6) A description of the payment schedule;
- 16 (7) The terms on which additional advances, if any, will
17 be made;
- 18 (8) The charge to be imposed for past-due installments;
- 19 (9) A description and the cost of insurance required by
20 the lender or purchased by the borrower in connection
21 with the primary or subordinate mortgage loan;
- 22 (10) The name and address of the borrower and of the
23 lender; and
- 24 (11) That the borrower may prepay the primary or
25 subordinate mortgage loan, in whole or in part, on any
26 installment date and that the borrower will receive a
27 rebate in full for any unearned finance charge.
- 28 Such detailed closing statement shall be signed by the
29 broker, lender or closing representative and a completed
30 and signed copy thereof is retained by the broker or lender
31 and made available at all reasonable times to the bor-
32 rower, the borrower's successor in interest to the residen-
33 tial property or the authorized agent of the borrower or
34 the borrower's successor, until the time as the indebted-
35 ness is satisfied in full. Providing a HUD 1 or HUD 1A
36 settlement statement that provides the disclosures re-
37 quired by this subsection and the residential mortgage
38 disclosures required by federal law is considered to meet
39 the requirements of this subsection.
- 40 The commissioner may, from time to time, by rules
41 prescribe additional information to be included in a
42 closing statement.
- 43 (b) Upon written request from the borrower, the holder
44 of a primary or subordinate mortgage loan instrument
45 shall deliver to the borrower, within ten business days

46 from and after receipt of the written request, a statement
47 of the borrower's account as required by subsection two,
48 section one hundred fourteen, article two, chapter forty-
49 six-a of this code.

50 (c) Upon satisfaction of a primary or subordinate
51 mortgage loan obligation in full, the holder of the instru-
52 ment evidencing or securing the obligation shall comply
53 with the requirements of section one, article twelve,
54 chapter thirty-eight of this code in the prompt release of
55 the lien which had secured the primary or subordinate
56 mortgage loan obligation.

57 (d) Upon written request or authorization from the
58 borrower, the holder of a primary or subordinate mortgage
59 loan instrument shall send or otherwise provide to the
60 borrower or his or her designee, within three business days
61 after receipt of the written request or authorization, a
62 payoff statement of the borrower's account. Except as
63 provided by this subsection, no charge may be made for
64 providing the payoff statement. Charges for the actual
65 expenses associated with using a third-party courier
66 delivery or expedited mail delivery service may be assessed
67 when this type of delivery is requested and authorized by
68 the borrower following disclosure to the borrower of its
69 cost. The payoff information is provided by mail, tele-
70 phone, courier, facsimile or other transmission as re-
71 quested by the borrower or his or her designee.

72 (e) A licensee shall keep and maintain for thirty-six
73 months after the date of final entry the business records
74 regarding residential mortgage loans applied for,
75 brokered, originated or serviced in the course of its
76 business.

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

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

3 owner, director, officer, member, partner, stockholder,
4 employee or agent of the licensee:

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

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

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

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

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

16 (6) Has committed any fraud or engaged in any dishon-
17 est activities with respect to any mortgage loan business in
18 this state or failed to disclose any of the material particu-
19 lars of any mortgage loan transaction in this state to
20 anyone entitled to the information; or

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

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

37 any ground which would be cause for refusing a license to
38 the licensee were he or she then applying for the same.
39 The commissioner may also suspend or revoke the license
40 of a licensee pursuant to his or her authority under section
41 thirteen, article two, chapter thirty-one-a of this code.

42 (b) The suspension or revocation of the license of any
43 licensee shall not impair or affect the obligation of any
44 preexisting lawful mortgage loan between the licensee and
45 any obligor.

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

52 (d) In addition to the authority conferred under this
53 section, the commissioner may impose a fine or penalty not
54 exceeding one thousand dollars upon any lender or broker
55 required to be licensed under this chapter who the com-
56 missioner determines has violated any of the provisions of
57 this chapter. For the purposes of this section, each sepa-
58 rate violation is subject to the fine or penalty herein
59 prescribed and each day after the date of notification,
60 excluding Sundays and holidays, that an unlicensed
61 person engages in the business or holds himself or herself
62 out to the general public as a mortgage lender or broker
63 shall constitute a separate violation.

**§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 section
4 thirteen of this article, if not previously provided the
5 opportunity to a hearing on the matter, may in writing
6 demand a hearing before the commissioner. The commis-
7 sioner may appoint a hearing examiner to conduct the

8 hearing and prepare a recommended decision. The written
9 demand for a hearing must be filed with the commissioner
10 within thirty days after the date upon which the applicant
11 or licensee was served with a copy of the order. The timely
12 filing of a written demand for hearing shall stay or
13 suspend execution of the order in question, pending a final
14 determination, except for an order suspending a license for
15 failure of the licensee to maintain the bond required by
16 section four of this article in full force and effect. If a
17 written demand is timely filed as aforesaid, the aggrieved
18 party is entitled to a hearing as a matter of right.

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

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

37 (d) Any hearing shall be held within twenty days after
38 the date upon which the commissioner received the timely
39 written demand therefor unless there is a postponement or
40 continuance. The commissioner or hearing examiner may
41 postpone or continue any hearing on his or her own motion
42 or for good cause shown upon the application of the
43 aggrieved party. At any hearing, the aggrieved party may
44 represent himself or herself or be represented by any

45 attorney-at-law admitted to practice before any circuit
46 court of this state.

47 (e) After the hearing and consideration of all of the
48 testimony, evidence and record in the case, the commis-
49 sioner shall make and enter an order affirming, modifying
50 or vacating his or her earlier order, or shall make and
51 enter an order as is considered appropriate, meet and
52 proper. If the commissioner appoints a hearing examiner
53 then the commissioner must issue his or her final order
54 within fifteen days of receiving the recommended decision
55 of the hearing examiner. The order shall be accompanied
56 by findings of fact and conclusions of law as specified in
57 section three, article five, chapter twenty-nine-a of this
58 code and a copy of the order and accompanying findings
59 and conclusions shall be served upon the aggrieved party
60 and his or her attorney of record, if any, in person or by
61 certified mail, return receipt requested, or in any other
62 manner in which process in a civil action in this state may
63 be served. The order of the commissioner is final unless
64 vacated or modified on judicial review thereof in accor-
65 dance with the provisions of section fifteen of this article.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within approved bill this the 2
Day of May, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time 2:25pm