

SB 532

FILED

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**WEST VIRGINIA LEGISLATURE** SECRETARY OF STATE

**SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2009**

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 532**

(SENATORS MINARD, JENKINS AND  
KESSLER, *original sponsors*)

[Passed April 9, 2009; to take effect July 1, 2009.]

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AN ACT to amend and reenact §31-17-1, §31-17-2, §31-17-3, §31-17-4, §31-17-5, §31-17-7, §31-17-11, §31-17-12, §31-17-13 and §31-17-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §31-17A-1, §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-5, §31-17A-6, §31-17A-7, §31-17A-8, §31-17A-9, §31-17A-10, §31-17A-11, §31-17A-12, §31-17A-13, §31-17A-14, §31-17A-15, §31-17A-16, §31-17A-17, §31-17A-18, §31-17A-19 and §31-17A-20; and to amend and reenact §46A-4-102 of said code, all relating to the Division of Banking's participation in the Nation-

wide Mortgage Licensing System and Registry; complying with the SAFE Mortgage Licensing Act; amending and creating definitions; exempting federally insured depository institutions from broker licensing; allowing the Division of Banking to participate in the Nationwide Mortgage Licensing System and Registry; permitting the Nationwide Mortgage Licensing System and Registry to process background and credit checks on behalf of the Commissioner of Banking; creating a tiered bond structure for licensed lenders and brokers; reducing the license processing time for lenders and brokers; requiring a new application for certain changes in control of mortgage licensees; clarifying the fee for licensee office relocation; synchronizing the mortgage annual report requirement with the Nationwide Mortgage Licensing System and Registry; outlining the purpose of the West Virginia SAFE Mortgage Licensing Act; defining terms associated with the SAFE Mortgage Licensing Act; requiring licensing and registration of mortgage loan originators; creating an application procedure for mortgage loan originators with minimum standards; requiring prelicensure education of mortgage loan originators; implementing a prelicensure testing requirement for mortgage loan originators; explaining standards for mortgage loan originator license renewal; clarifying annual continuing education requirements for mortgage loan originators; granting the commissioner authority to require mortgage loan originator licensing through the Nationwide Mortgage Licensing System and Registry; requiring the commissioner to create a challenge process for the Nationwide Mortgage Licensing System and Registry; creating enforcement authority for mortgage loan originators; defining violations and penalties of the SAFE Mortgage Licensing Act; requiring a surety bond to cover licensed mortgage loan originators that is tied to the amount of mortgage originations by each lender, broker or regulated consumer lender licensee; creating confidentiality provisions; granting investigation and examination

authority to the Commissioner of Banking for violations of the SAFE Mortgage Licensing Act; outlining prohibited acts and practices for mortgage loan originators; requiring the Commissioner of Banking to report to the Nationwide Mortgage Licensing System and Registry; clarifying the use of unique identifiers; creating a severability section; defining effective dates; requiring the licensure of mortgage loan originators employed by licensed regulated consumer lenders; and implementing a bond requirement for regulated consumer lenders that originate mortgage loans.

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

That §31-17-1, §31-17-2, §31-17-3, §31-17-4, §31-17-5, §31-17-7, §31-17-11, §31-17-12, §31-17-13 and §31-17-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §31-17A-1, §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-5, §31-17A-6, §31-17A-7, §31-17A-8, §31-17A-9, §31-17A-10, §31-17A-11, §31-17A-12, §31-17A-13, §31-17A-14, §31-17A-15, §31-17A-16, §31-17A-17, §31-17A-18, §31-17A-19 and §31-17A-20; and that §46A-4-102 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 31. CORPORATIONS.**

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

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

1 As used in this article:

2 (a) "Additional charges" means every type of charge  
3 arising out of the making or acceptance of a primary or  
4 subordinate mortgage loan, except finance charges,  
5 including, but not limited to, official fees and taxes,  
6 reasonable closing costs and certain documentary charges  
7 and insurance premiums and other charges which defini-

8 tion is to be read in conjunction with and permitted by  
9 section one hundred nine, article three, chapter forty-six-a  
10 of this code;

11 (b) "Affiliated" means persons under the same owner-  
12 ship or management control. As to corporations, limited  
13 liability companies or partnerships, where common  
14 owners manage or control a majority of the stock, mem-  
15 bership interests or general partnership interests of one or  
16 more such corporations, limited liability companies or  
17 partnerships, those persons are considered affiliated. In  
18 addition, persons under the ownership or management  
19 control of the members of an immediate family shall be  
20 considered affiliated. For purposes of this section,  
21 "immediate family" means mother, stepmother, father,  
22 stepfather, sister, stepsister, brother, stepbrother, spouse,  
23 child and grandchildren;

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

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

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

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

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

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

37 (C) Additional charges permitted by this article;

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

40 (e) "Broker" means any person acting in the regular  
41 course of business who, for a fee or commission or other  
42 consideration, negotiates or arranges, or who offers to  
43 negotiate or arrange, or originates or assigns a primary or  
44 subordinate mortgage loan between a lender and a bor-  
45 rower. A person is considered to be acting in the regular  
46 course of business if he or she negotiates or arranges, or  
47 offers to negotiate or arrange, or originates, processes or  
48 assigns any primary or subordinate mortgage loans in any  
49 one calendar year; or if he or she seeks to charge a bor-  
50 rower or receive from a borrower money or other valuable  
51 consideration in any primary or subordinate mortgage  
52 transaction before completing performance of all broker  
53 services that he or she has agreed to perform for the  
54 borrower;

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

58 (g) "Commissioner" means the Commissioner of Bank-  
59 ing of this state;

60 (h) "Finance charge" means the sum of all interest and  
61 similar charges payable directly or indirectly by the debtor  
62 imposed or collected by the lender incident to the exten-  
63 sion of credit as coextensive with the definition of "loan  
64 finance charge" set forth in section one hundred two,  
65 article one, chapter forty-six-a of this code;

66 (i) "Lender" means any person who makes or offers to  
67 make or accepts or offers to accept or purchases or ser-  
68 vices any primary or subordinate mortgage loan in the  
69 regular course of business. A person is considered to be  
70 acting in the regular course of business if he or she makes  
71 or accepts, or offers to make or accept, any primary or  
72 subordinate mortgage loans in any one calendar year;

73 (j) "Licensee" means any person duly licensed by the  
74 commissioner under the provisions of this article or article  
75 seventeen-a of this chapter as a lender, broker or mortgage  
76 loan originator;

77 (k) "Nationwide Mortgage Licensing System and  
78 Registry" means a mortgage licensing system developed  
79 and maintained by the Conference of State Bank Supervi-  
80 sors and the American Association of Residential Mort-  
81 gage Regulators for the licensing and registration of  
82 licensed mortgage brokers and lenders licensed under this  
83 article and mortgage loan originators licensed under  
84 article seventeen-a of this chapter;

85 (l) "Person" means an individual, partnership, associa-  
86 tion, trust, corporation or any other legal entity, or any  
87 combination thereof;

88 (m) "Primary mortgage loan" means any loan primarily  
89 for personal, family or household use that is secured by a  
90 mortgage, deed of trust or other equivalent consensual  
91 security interest on a dwelling as defined in Section 103(v)  
92 of the Truth in Lending Act or residential real estate upon  
93 which is constructed or intended to be constructed a  
94 dwelling;

95 (n) "Servicing" or "servicing a residential mortgage  
96 loan" means through any medium or mode of communica-  
97 tion the collection or remittance for, or the right or  
98 obligation to collect or remit for another lender, note  
99 owner or noteholder, payments of principal, interest,  
100 including sales finance charges in a consumer credit sale,  
101 and escrow items as insurance and taxes for property  
102 subject to a residential mortgage loan; and

103 (o) "Subordinate mortgage loan" means any loan  
104 primarily for personal, family or household use that is  
105 secured by a mortgage, deed of trust or other equivalent  
106 consensual security interest on a dwelling as defined in

107 Section 103(v) of the Truth in Lending Act or residential  
108 real estate upon which is constructed or intended to be  
109 constructed a dwelling and is subject to the lien of one or  
110 more prior recorded mortgages or deeds of trust.

**§31-17-2. License required for lender and broker originator;  
exemptions.**

1 (a) A person may not engage in this state in the business  
2 of lender or broker unless and until he or she first obtains  
3 a license to do so from the commissioner, which license  
4 remains unexpired, unsuspended and unrevoked, and no  
5 foreign corporation may engage in business in this state  
6 unless it is registered with the Secretary of State to  
7 transact business in this state.

8 (b) All mortgage loan originators, as that term is  
9 defined by section two, article seventeen-a of this chapter,  
10 shall obtain a mortgage loan originator license pursuant to  
11 said article.

12 (c) Brokerage fees, additional charges and finance  
13 charges imposed by licensed mortgage brokers, lenders  
14 and loan originators are exempt from the tax imposed by  
15 article fifteen, chapter eleven of this code beginning on  
16 January 1, 2004.

17 (d) The provisions of this article do not apply to loans  
18 made by the following:

19 (1) Federally insured depository institutions;

20 (2) Regulated consumer lender licensees;

21 (3) Insurance companies;

22 (4) Any other lender under the regular supervision and  
23 examination for consumer compliance of any agency of the  
24 federal government;



25 (5) Any agency or instrumentality of this state, federal,  
26 county or municipal government or on behalf of the  
27 agency or instrumentality;

28 (6) By a nonprofit community development organiza-  
29 tion making mortgage loans to promote home ownership  
30 or improvements for the disadvantaged which loans are  
31 subject to federal, state, county or municipal government  
32 supervision and oversight; or

33 (7) Habitat for Humanity International, Inc., and its  
34 affiliates providing low-income housing within this state.  
35 Loans made subject to this exemption may be assigned,  
36 transferred, sold or otherwise securitized to any person  
37 and shall remain exempt from the provisions of this  
38 article, except as to reporting requirements in the discre-  
39 tion of the commissioner where the person is a licensee  
40 under this article. Nothing herein shall prohibit a broker  
41 licensed under this article from acting as broker of an  
42 exempt loan and receiving compensation as permitted  
43 under the provisions of this article.

44 (e) The provisions of this article do not apply to loans  
45 brokered by a federally insured depository institution.

46 (f) A person or entity designated in subsection (d) of this  
47 section may take assignments of a primary or subordinate  
48 mortgage loan from a licensed lender and the assignments  
49 of said loans that they themselves could have lawfully  
50 made as exempt from the provisions of this article under  
51 this section do not make that person or entity subject to  
52 the licensing, bonding, reporting or other provisions of this  
53 article except as the defense or claim would be preserved  
54 pursuant to section one hundred two, article two, chapter  
55 forty-six-a of this code.

56 (g) The placement or sale for securitization of a primary  
57 or subordinate mortgage loan into a secondary market by  
58 a licensee may not subject the warehouser or final securiti-

59 zation holder or trustee to the provisions of this article:  
60 *Provided*, That the warehouser, final securitization holder  
61 or trustee under an arrangement is either a licensee, or  
62 person or entity entitled to make exempt loans of that type  
63 under this section, or the loan is held with right of re-  
64 course to a licensee.

**§31-17-3. Supervision by Commissioner of Banking; rules and regulations; personnel; participation in the Nationwide Mortgage Licensing System and Registry.**

1 (a) It shall be the duty of the commissioner to enforce  
2 the provisions of this article and, to implement and make  
3 effective such provisions, he or she is hereby authorized  
4 and empowered to promulgate reasonable rules in accor-  
5 dance with the provisions of article three, chapter  
6 twenty-nine-a of this code and to employ such personnel  
7 as may be necessary.

8 (b) The commissioner may participate in the Nation-  
9 wide Mortgage Licensing System and Registry and permit  
10 such system to process applications for mortgage lender  
11 and mortgage broker licenses in this state and receive and  
12 maintain records related to such licenses that are allowed  
13 or required to be maintained by the commissioner. The  
14 commissioner is authorized to establish relationships or  
15 contracts with the Nationwide Mortgage Licensing System  
16 and Registry or other entities designated by the Nation-  
17 wide Mortgage Licensing System and Registry to collect  
18 and maintain records and process transaction fees or other  
19 fees related to licensees subject to this article. The Na-  
20 tionwide Mortgage Licensing System and Registry shall  
21 transfer electronically all fees payable to the Division of  
22 Banking directly to the credit of the commissioner's  
23 special revenue account with the State Treasurer.

24 (c) Mortgage lenders and brokers licensed pursuant to  
25 this article shall submit renewals for calendar year 2010  
26 on or before October 1, 2009, in accordance with the

27 amendments to this article and on a form prescribed by  
28 the commissioner. Beginning January 2, 2010, licensees  
29 shall transition to the Nationwide Mortgage Licensing  
30 System and Registry according to the terms established by  
31 that system.

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

1 (a) In connection with an application for licensing as a  
2 mortgage lender or mortgage broker, the applicant shall,  
3 at a minimum, furnish to the Nationwide Mortgage  
4 Licensing System and Registry information concerning the  
5 applicant's identity, including:

6 (1) Fingerprints for submission to the Federal Bureau of  
7 Investigation and any governmental agency or entity  
8 authorized to receive such information for a state, national  
9 and international criminal history background check; and

10 (2) Personal history and experience in a form prescribed  
11 by the Nationwide Mortgage Licensing System and  
12 Registry and the commissioner, including the submission  
13 of authorization for the Nationwide Mortgage Licensing  
14 System and Registry and the commissioner to obtain:

15 (A) An independent credit report obtained from a  
16 consumer reporting agency described in Section 603(p) of  
17 the Fair Credit Reporting Act; and

18 (B) Information related to any administrative, civil or  
19 criminal findings by any governmental jurisdiction.

20 (b) In order to reduce the points of contact which the  
21 Federal Bureau of Investigation may have to maintain for  
22 purposes of this article, the commissioner may use the  
23 Nationwide Mortgage Licensing System and Registry or  
24 its designated vendor as a channeling agent for requesting  
25 information from and distributing information to the  
26 Department of Justice or any governmental agency.

27 (c) In order to reduce the points of contact which the  
28 commissioner may have to maintain, for purposes of this  
29 article, the commissioner may use the Nationwide Mort-  
30 gage Licensing System and Registry as a channeling agent  
31 for requesting and distributing information to and from  
32 any source so directed by the commissioner.

33 (d) Application for a lender's or broker's license shall  
34 each year be submitted under oath, in the form prescribed  
35 by the commissioner, and shall contain the full name and  
36 address of the applicant and, if the applicant is a partner-  
37 ship, limited liability company or association, of every  
38 member thereof, and, if a corporation, of each officer,  
39 director and owner of ten percent or more of the capital  
40 stock thereof and further information as the commissioner  
41 may reasonably require. Background and credit checks  
42 shall be conducted in accordance with this section for any  
43 officer, director or owner, directly or indirectly, of ten  
44 percent or more of the capital stock of a corporation or  
45 any member of a limited liability or partnership with,  
46 directly or indirectly, a ten percent or greater ownership  
47 interest. Any application shall also disclose the location  
48 at which the business of lender or broker is to be con-  
49 ducted.

50 (e) At the time of making application for a lender's  
51 license, the applicant therefor shall:

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

56 (2) Submit proof that he or she has available for the  
57 operation of the business at the location specified in the  
58 application net worth of at least \$250,000;

59 (3) File with the commissioner a bond in favor of the  
60 state for the benefit of consumers or for a claim by the

61 commissioner for an unpaid civil administrative penalty or  
62 an unpaid examination invoice in the amount of \$100,000  
63 for licensees with West Virginia annual loan originations  
64 of \$0 to \$3 million, \$150,000 for West Virginia annual loan  
65 originations greater than \$3 million and up to \$10 million,  
66 and \$250,000 for West Virginia annual loan originations  
67 over \$10 million in a form and with conditions as the  
68 commissioner may prescribe and executed by a surety  
69 company authorized to do business in this state: *Provided*,  
70 That lender licensees who service West Virginia mortgage  
71 loans shall file with the commissioner a bond under the  
72 same conditions listed above in the amount of \$200,000;

73 (4) Pay to the commissioner a license fee of \$1,250 plus  
74 the actual cost of fingerprint processing and the process-  
75 ing fees assessed by the Nationwide Mortgage Licensing  
76 System and Registry. If the commissioner shall determine  
77 that an investigation outside this state is required to  
78 ascertain facts or information relative to the applicant or  
79 information set forth in the application, the applicant may  
80 be required to advance sufficient funds to pay the esti-  
81 mated cost of the investigation. An itemized statement of  
82 the actual cost of the investigation outside this state shall  
83 be furnished to the applicant by the commissioner and the  
84 applicant shall pay or shall have returned to him or her, as  
85 the case may be, the difference between his or her payment  
86 in advance of the estimated cost and the actual cost of the  
87 investigation; and

88 (5) Submit a full and complete disclosure of any  
89 litigation or unresolved complaint filed by a governmental  
90 authority or class action lawsuit on behalf of consumers  
91 relating to the operation of the license applicant.

92 (f) At the time of making application for a broker's  
93 license, the applicant therefor shall:

94 (1) If a foreign corporation, submit a certificate from  
95 the Secretary of State certifying that the applicant is

96 registered with the Secretary of State to transact business  
97 in this state;

98 (2) Submit proof that he or she has available for the  
99 operation of the business at the location specified in the  
100 application net worth of at least \$10,000;

101 (3) File with the commissioner a bond in favor of the  
102 state for the benefit of consumers or for a claim by the  
103 commissioner for an unpaid civil administrative penalty or  
104 an unpaid examination invoice in the amount of \$50,000  
105 for licensees with West Virginia loan originations of \$0 to  
106 \$3 million, \$75,000 for West Virginia loan originations  
107 greater than \$3 million and up to \$10 million, and  
108 \$100,000 for West Virginia loan originations over \$10  
109 million in a form and with conditions as the commissioner  
110 may prescribe and executed by a surety company autho-  
111 rized to do business in this state: *Provided*, That the bond  
112 must be in the amount of \$150,000 before a broker may  
113 participate in a table-funded residential mortgage loan;

114 (4) Pay to the commissioner a license fee of \$350 plus  
115 the actual cost of fingerprint processing and the process-  
116 ing fees assessed by the Nationwide Mortgage Licensing  
117 System and Registry; and

118 (5) Submit a full and complete disclosure of any  
119 litigation or unresolved complaint filed by a governmental  
120 authority or class action lawsuit on behalf of consumers  
121 relating to the operation of the license applicant.

122 (g) The aggregate liability of the surety on any bond  
123 given pursuant to the provisions of this section shall in no  
124 event exceed the amount of the bond.

125 (h) Nonresident lenders and brokers licensed under this  
126 article by their acceptance of the license acknowledge that  
127 they are subject to the jurisdiction of the courts of West  
128 Virginia and the service of process pursuant to section one

129 hundred thirty-seven, article two, chapter forty-six-a of  
130 this code and section thirty-three, article three, chapter  
131 fifty-six of this code.

132 (i) The commissioner may elect to reduce or waive the  
133 application fees, bond amounts and net worth require-  
134 ments imposed by this section for nonprofit corporations  
135 whose residential mortgage lending or brokering activities  
136 provide housing primarily to households or persons below  
137 the HUD-established median income for their area of  
138 residence.

139 (j) Every broker and lender licensee shall pay a fee of \$5  
140 for each residential mortgage loan originated, made or  
141 brokered in a calendar year. This fee shall be paid annu-  
142 ally to the Division of Banking and remitted with the  
143 report required pursuant to subsection (b), section eleven  
144 of this article for loans made, brokered or originated  
145 during the previous calendar year. If a licensee ceases  
146 operation, it shall remit any fees due since the last report-  
147 ing period when it relinquishes its license.

148 (k) If a claim for a consumer restitution is pending on a  
149 bond required pursuant to this section when the commis-  
150 sioner makes a claim for a civil administrative penalty or  
151 an unpaid examination invoice, the consumer claim shall  
152 be resolved before any payments may be made for an  
153 unpaid penalty or examination invoice.

**§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 commissioner  
3 shall investigate the relevant facts with regard to the  
4 applicant and his or her application for a lender's or  
5 broker's license, as the case may be. Upon the basis of the  
6 application and all other information before him or her,  
7 the commissioner shall make and enter an order denying

8 the application and refusing the license sought if the  
9 commissioner finds that:

10 (1) The applicant does not have available the net worth  
11 required by the provisions of section four of this article, if  
12 applicable;

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

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

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

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



**§31-17-7. License not transferable or assignable; license may not be franchised; renewal of license.**

1 (a) A license may not be transferable or assignable. A  
2 licensee may not offer a franchise under that license to  
3 another person. The commissioner may allow licensees to  
4 have branch offices without requiring additional licenses  
5 provided the location of all branch offices is registered  
6 with the Division of Banking by the licensee. Whenever a  
7 licensee changes his or her place of business to a location  
8 other than that set forth in his or her license and branch  
9 registration, he or she shall give written notice thirty days  
10 prior to such change to the commissioner and pay a  
11 relocation fee of \$100 for each office relocation.

12 (b) Every lender's or broker's license shall, unless  
13 sooner suspended or revoked, expire on December 31 of  
14 each year and any license may be renewed each year in the  
15 same manner, for the same license fee or fees specified  
16 above and upon the same basis as an original license is  
17 issued in accordance with the provisions of this article.  
18 All applications for the renewal of licenses shall be filed  
19 with the Nationwide Mortgage Licensing System and  
20 Registry according to the renewal schedule published for  
21 the system, but no later than sixty days before the expira-  
22 tion thereof.

23 (c) Any change in control of a licensee whereby equita-  
24 ble interest of fifty percent or more is transferred to an  
25 outside party, a new application must be submitted  
26 according to this article.

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

1 (a) Every lender and broker licensee shall maintain at  
2 his or her place of business in this state, if any, or if he or  
3 she has no place of business in this state, at his or her  
4 principal place of business outside this state, such books,

5 accounts and records relating to all transactions within  
6 this article as are necessary to enable the commissioner to  
7 enforce the provisions of this article. All the books,  
8 accounts and records shall be preserved, exhibited to the  
9 commissioner and kept available as provided herein for  
10 the 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 a  
15 report under oath or affirmation concerning his or her  
16 business and operations in this state for the preceding  
17 license year upon participation in the Nationwide Mort-  
18 gage Licensing System and Registry and on a date estab-  
19 lished by the Nationwide Mortgage Licensing System and  
20 Registry. For license years 2008 and 2009, all licensees  
21 shall submit an annual report to the Division of Banking  
22 on or before March 15, 2009, and March 15, 2010, respec-  
23 tively, on a form prescribed by the commissioner.

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 lender or broker licensee  
27 pertaining to primary and subordinate mortgage loans  
28 made in this state under the provisions of this article, for  
29 the purpose of determining whether each lender and  
30 broker licensee is complying with the provisions hereof  
31 and for the purpose of verifying each lender or broker  
32 licensee's annual report. If the examination is made  
33 outside this state, the licensee shall pay the cost thereof in  
34 like manner as applicants are required to pay the cost of  
35 investigations outside this state.

36 (d) The commissioner shall publish annually an aggre-  
37 gate analysis of the information furnished in accordance  
38 with the provisions of subsection (b) or (c) of this section,

39 but the individual reports are not public records and may  
40 not be open to public inspection.

41 (e) The commissioner may enter into cooperative and  
42 information-sharing agreements with regulators in other  
43 states or with federal authorities to discharge his or her  
44 responsibilities under this article.

**§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 broker  
2 or lender license issued hereunder if he or she finds that  
3 the licensee or any owner, director, officer, member,  
4 partner, stockholder, 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;

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

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

12 (4) Has failed or refused to keep the bond required by  
13 this article in full force and effect, if applicable;

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

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 does 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  
54 not exceeding \$1000 upon any lender or broker required to  
55 be licensed under this chapter who the commissioner  
56 determines has violated any of the provisions of this

57 chapter. For the purposes of this section, each separate  
58 violation is subject to the fine or penalty herein prescribed  
59 and each day after the date of notification, excluding  
60 Sundays and holidays, that an unlicensed person engages  
61 in the business or holds himself or herself out to the  
62 general public as a mortgage lender or broker shall  
63 constitute a separate violation.

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

1 (a) Whenever the commissioner refuses to issue a  
2 license, or suspends or revokes a license, he shall make and  
3 enter an order to that effect and shall cause a copy of the  
4 order to be served in person or by certified mail, return  
5 receipt requested, or in any other manner in which process  
6 in a civil action in this state may be served, on the appli-  
7 cant or licensee, as the case may be. The commissioner  
8 shall also submit a copy of any such order for publication  
9 by the Nationwide Mortgage Licensing System and  
10 Registry.

11 (b) It shall be the duty of the licensee to comply with  
12 any such order: (i) Immediately if the license was sus-  
13 pended either following a hearing or for failure to keep the  
14 bond required by the provisions of section four of this  
15 article in full force and effect; or otherwise (ii) following  
16 expiration of the period provided in section fourteen of  
17 this article in which such licensee, if not previously  
18 provided the opportunity to a hearing on the matter, may  
19 demand a hearing before the commissioner without such  
20 demand having been timely made.

**§31-17-20. Effective date.**

1 The amendments to this article enacted during the  
2 regular session of the Legislature in the year 2009 shall be  
3 effective as of July 1, 2009.

**ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.**

**§31-17A-1. Purpose.**

1 The activities of mortgage loan originators and the  
2 origination or offering of financing for residential real  
3 property have a direct, valuable and immediate impact  
4 upon West Virginia's consumers, West Virginia's economy,  
5 the neighborhoods and communities of West Virginia and  
6 the housing and real estate industry. The Legislature finds  
7 that accessibility to mortgage credit is vital to the state's  
8 citizens. The Legislature also finds that it is essential for  
9 the protection of the citizens of West Virginia and the  
10 stability of West Virginia's economy that reasonable  
11 standards for licensing and regulation of the business  
12 practices of mortgage loan originators be imposed. The  
13 Legislature further finds that the obligations of mortgage  
14 loan originators to consumers in connection with originat-  
15 ing or making residential mortgage loans are such as to  
16 warrant the regulation of the mortgage lending process.  
17 The purpose of this article is to protect consumers seeking  
18 mortgage loans and to ensure that the mortgage lending  
19 industry is operating without unfair, deceptive and  
20 fraudulent practices on the part of mortgage loan origina-  
21 tors.

**§31-17A-2. Definitions.**

1 For purposes of this article, the following definitions  
2 shall apply:

3 (1) "Depository institution" has the same meaning as in  
4 section three of the Federal Deposit Insurance Act and  
5 includes any federally insured credit union.

6 (2) "Federal banking agencies" means the Board of  
7 Governors of the Federal Reserve System, the Comptroller  
8 of the Currency, the Director of the Office of Thrift

9 Supervision, the National Credit Union Administration  
10 and the Federal Deposit Insurance Corporation.

11 (3) "Immediate family member" means a spouse, child,  
12 sibling, parent, grandparent or grandchild. This includes  
13 stepparents, stepchildren, stepsiblings and adoptive  
14 relationships.

15 (4) "Individual" means a natural person.

16 (5) "Loan processor or underwriter" means an individ-  
17 ual who performs clerical or support duties as an employee  
18 at the direction of and subject to the supervision and  
19 instruction of a person licensed or exempt from licensing  
20 under article seventeen of this chapter.

21 (A) For purposes of this subsection, "clerical or support  
22 duties" may include subsequent to the receipt of an  
23 application: (i) The receipt, collection, distribution and  
24 analysis of information common for the processing or  
25 underwriting of a residential mortgage loan; and (ii)  
26 communicating with a consumer to obtain the information  
27 necessary for the processing or underwriting of a loan, to  
28 the extent that such communication does not include  
29 offering or negotiating loan rates or terms, or counseling  
30 consumers about residential mortgage loan rates or terms.

31 (B) An individual engaging solely in loan processor or  
32 underwriter activities shall not represent to the public,  
33 through advertising or other means of communicating or  
34 providing information, including the use of business cards,  
35 stationery, brochures, signs, rate lists or other promotional  
36 items, that such individual can or will perform any of the  
37 activities of a mortgage loan originator.

38 (6) "Mortgage loan originator" means an individual  
39 who for compensation or gain or in the expectation of  
40 compensation or gain takes a residential mortgage loan  
41 application or offers or negotiates terms of a residential

42 mortgage loan and is sponsored by a mortgage lender,  
43 broker or regulated consumer lender licensed by the  
44 Division of Banking.

45 (A) "Mortgage loan originator" does not include:

46 (i) An individual engaged solely as a loan processor or  
47 underwriter except as otherwise provided in section three  
48 of this article;

49 (ii) A person or entity that only performs real estate  
50 brokerage activities and is licensed or registered in  
51 accordance with West Virginia law, unless the person or  
52 entity is compensated by a lender, a mortgage broker or  
53 other mortgage loan originator or by any agent of such  
54 lender, mortgage broker or other mortgageloan originator;

55 (iii) A person or entity solely involved in extensions of  
56 credit relating to timeshare plans, as that term is defined  
57 in Section 101(53D) of Title 11, United States Code; and

58 (iv) A manufactured or modular home retailer employee  
59 who performs purely administrative or clerical tasks and  
60 who receives only the customary salary or commission  
61 from the employer in connection with the sales transac-  
62 tion.

63 (7) "Real estate brokerage activity" means any activity  
64 that involves offering or providing real estate brokerage  
65 services to the public, including:

66 (A) Acting as a real estate agent or real estate broker for  
67 a buyer, seller, lessor or lessee of real property;

68 (B) Bringing together parties interested in the sale,  
69 purchase, lease, rental or exchange of real property;

70 (C) Negotiating, on behalf of any party, any portion of  
71 a contract relating to the sale, purchase, lease, rental or  
72 exchange of real property other than in connection with  
73 providing financing with respect to any such transaction;



74 (D) Engaging in any activity for which a person en-  
75 gaged in the activity is required to be registered or li-  
76 censed as a real estate agent or real estate broker under  
77 any applicable law; and

78 (E) Offering to engage in any activity, or act in any  
79 capacity, described in subsection (1), (2), (3) or (4) of this  
80 section.

81 (8) "Nationwide Mortgage Licensing System and  
82 Registry" means a mortgage licensing system developed  
83 and maintained by the Conference of State Bank Supervi-  
84 sors and the American Association of Residential Mort-  
85 gage Regulators for the licensing and registration of  
86 mortgage brokers and lenders licensed pursuant to article  
87 seventeen of this chapter and mortgage loan originators  
88 licensed pursuant to this article.

89 (9) "Nontraditional mortgage product" means any  
90 mortgage product other than a fixed rate mortgage.

91 (10) "Person" means a natural person, corporation,  
92 company, limited liability company, partnership or  
93 association.

94 (11) "Registered mortgage loan originator" means any  
95 individual who:

96 (A) Meets the definition of mortgage loan originator  
97 and is an employee of:

98 (i) A depository institution;

99 (ii) A subsidiary that is:

100 (1) Owned and controlled by a depository institution;  
101 and

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

103 (iii) An institution regulated by the Farm Credit  
104 Administration; and

105 (B) Is registered with, and maintains a unique identifier  
106 through, the Nationwide Mortgage Licensing System and  
107 Registry.

108 (12) "Residential mortgage loan" means any loan  
109 primarily for personal, family or household use that is  
110 secured by a mortgage, deed of trust or other equivalent  
111 consensual security interest on a dwelling as defined in  
112 Section 103(v) of the Truth in Lending Act or residential  
113 real estate upon which is constructed or intended to be  
114 constructed a dwelling.

115 (13) "Residential real estate" means any real property  
116 located in West Virginia, upon which is constructed or  
117 intended to be constructed a dwelling.

118 (14) "Unique identifier" means a number or other  
119 identifier assigned by protocols established by the Nation-  
120 wide Mortgage Licensing System and Registry.

**§31-17A-3. License and registration required.**

1 (a) An individual, unless specifically exempted under  
2 subsection (c) of this section, shall not engage in the  
3 business of a mortgage loan originator with respect to any  
4 dwelling located in this state without first obtaining and  
5 maintaining annually a license under this article. Each  
6 licensed mortgage loan originator must register with and  
7 maintain a valid unique identifier issued by the Nation-  
8 wide Mortgage Licensing System and Registry.

9 (b) To facilitate an orderly transition to licensing and  
10 minimize disruption in the mortgage marketplace, the  
11 effective date for subsection (a) of this section:

12 (1) For all individuals other than individuals described  
13 in subdivision (2) of this subsection shall be January 31,  
14 2010; and

15 (2) For all individuals licensed as mortgage loan  
16 originators before July 1, 2009, shall be January 1, 2011.

17 (c) The following are exempt from this article:

18 (1) Registered Mortgage Loan Originators, when acting  
19 for an entity described in subdivision (11), section two of  
20 this article;

21 (2) Any individual who offers or negotiates terms of a  
22 residential mortgage loan with or on behalf of an immedi-  
23 ate family member of the individual;

24 (3) Any individual who offers or negotiates terms of a  
25 residential mortgage loan secured by a dwelling that  
26 served as the individual's residence; and

27 (4) A licensed attorney who negotiates the terms of a  
28 residential mortgage loan on behalf of a client as an  
29 ancillary matter to the attorney's representation of the  
30 client, unless the attorney is compensated by a lender, a  
31 mortgage broker or other mortgage loan originator or by  
32 any agent of such lender, mortgage broker or other  
33 mortgage loan originator.

34 (d) A loan processor or underwriter who is an independ-  
35 ent contractor may not engage in the activities of a loan  
36 processor or underwriter unless such independent contrac-  
37 tor loan processor or underwriter obtains and maintains a  
38 license under subsection (a) of this section. Each inde-  
39 pendent contractor loan processor or underwriter licensed  
40 as a mortgage loan originator must have and maintain a  
41 valid unique identifier issued by the Nationwide Mortgage  
42 Licensing System and Registry.

43 (e) To implement an orderly and efficient licensing and  
44 transition process, the commissioner may establish interim  
45 policies and procedures for licensing and acceptance of  
46 applications as follows:

47 (1) Mortgage loan originators employed by or under  
48 exclusive contract to licensed mortgage brokers after the  
49 effective date of this article shall submit an application on  
50 a form prescribed by the commissioner, including all  
51 necessary information, fees and authorizations for investi-  
52 gation as the commissioner may determine necessary, and  
53 must meet the standards for licensure set forth in this  
54 article. Any license issued under this subdivision and any  
55 license current as of the effective date of this article will  
56 expire on December 31, 2010: *Provided*, That notwith-  
57 standing the licensing requirements under this section, an  
58 individual acting exclusively as an employee of a servicer  
59 who is engaging in loss mitigation efforts with respect to  
60 an existing mortgage transaction serviced by his or her  
61 employer is not required to meet the education, testing,  
62 background and licensing standards of this article until  
63 July 1, 2011, to the extent that this extension of time is not  
64 denied by guideline, rule, regulation or interpretive letter  
65 issued by the United States Department of Housing and  
66 Urban Development. In the event this extension of time is  
67 denied, such individuals shall apply for a license under  
68 this section within ninety days of the denial; and

69 (2) Mortgage loan originators employed by or under  
70 exclusive contract to licensed mortgage lenders and  
71 regulated consumer lenders shall comply with this article  
72 and submit all applications through the Nationwide  
73 Mortgage Licensing System and Registry on or before  
74 January 31, 2010.

**§31-17A-4. State license application and issuance.**

1 (a) Applicants for a license must apply in a form as  
2 prescribed by the commissioner. Each form shall contain  
3 content as set forth by instruction or procedure of the  
4 commissioner and may be changed or updated as neces-  
5 sary by the commissioner in order to carry out the pur-  
6 poses of this article. The application must be submitted  
7 with an application fee of \$50 plus the actual cost of  
8 fingerprint processing, together with any processing fee  
9 assessed by the Nationwide Mortgage Licensing System  
10 and Registry.

11 (b) The commissioner is authorized to establish rela-  
12 tionships or contracts with the Nationwide Mortgage  
13 Licensing System and Registry or other entities designated  
14 by the Nationwide Mortgage Licensing System and  
15 Registry to collect and maintain records and process  
16 transaction fees or other fees related to licensees or other  
17 persons subject to this article.

18 (c) In connection with an application for licensing as a  
19 mortgage loan originator, the applicant shall, at a mini-  
20 mum, furnish to the Nationwide Mortgage Licensing  
21 System and Registry information concerning the appli-  
22 cant's identity, including:

23 (1) Fingerprints for submission to the Federal Bureau of  
24 Investigation and any governmental agency or entity  
25 authorized to receive such information for a state, national  
26 and international criminal history background check; and

27 (2) Personal history and experience in a form prescribed  
28 by the Nationwide Mortgage Licensing System and  
29 Registry and the commissioner, including the submission  
30 of authorization for the Nationwide Mortgage Licensing  
31 System and Registry and the commissioner to obtain:

32 (A) An independent credit report obtained from a  
33 consumer reporting agency described in Section 603(p) of  
34 the Fair Credit Reporting Act; and

35 (B) Information related to any administrative, civil or  
36 criminal findings by any governmental jurisdiction.

37 (d) To reduce the points of contact which the Federal  
38 Bureau of Investigation may have to maintain, the com-  
39 missioner may use the Nationwide Mortgage Licensing  
40 System and Registry or its designated vendor as a channel-  
41 ing agent for requesting information from and distributing  
42 information to the Department of Justice or any govern-  
43 mental agency.

44 (e) To reduce the points of contact which the commis-  
45 sioner may have to maintain, the commissioner may use  
46 the Nationwide Mortgage Licensing System and Registry  
47 as a channeling agent for requesting and distributing  
48 information to and from any source so directed by the  
49 commissioner.

50 (f) Nonresident mortgage loan originators licensed  
51 under this article by their acceptance of the license  
52 acknowledge that they are subject to the jurisdiction of the  
53 courts of West Virginia and the service of process pursuant  
54 to section one hundred thirty-seven, article two, chapter  
55 forty-six-a of this code and section thirty-three, article  
56 three, chapter fifty-six of this code.

**§31-17A-5. Issuance of license.**

1 The commissioner may not issue a mortgage loan  
2 originator license unless the commissioner makes at a  
3 minimum the following findings:

4 (a) The applicant has never had a mortgage loan  
5 originator license revoked in any governmental jurisdic-  
6 tion, except that a subsequent formal vacation of the  
7 revocation may not be considered a revocation.

8 (b) The applicant has not been convicted of, or pled  
9 guilty or nolo contendere to, a felony in a domestic,  
10 foreign or military court: *Provided*, That any pardon of a  
11 conviction may not be a conviction for purposes of this  
12 subsection:

13 (1) During the seven-year period preceding the date of  
14 the application for licensing and registration; or

15 (2) At any time preceding the date of application if the  
16 felony involved an act of fraud, dishonesty or a breach of  
17 trust, or money laundering.

18 (c) The applicant has demonstrated financial responsi-  
19 bility, character and general fitness such as to command  
20 the confidence of the community and to warrant a deter-  
21 mination that the mortgage loan originator will operate  
22 honestly, fairly and efficiently within the purposes of this  
23 article.

24 For purposes of this subsection a person has shown that  
25 he or she is not financially responsible when he or she has  
26 shown a disregard in the management of his or her own  
27 financial condition. The commissioner shall not use a  
28 credit score as the sole basis for license denial. A determi-  
29 nation that an individual has not shown financial respon-  
30 sibility may include, but not be limited to:

31 (1) Current outstanding judgments, except judgments  
32 solely as a result of medical expenses;

33 (2) Current outstanding tax liens or other government  
34 liens and filings;

35 (3) Foreclosures within the past three years; and

36 (4) A pattern of seriously delinquent accounts within  
37 the past three years.

38 (d) The applicant has completed the prelicensing  
39 education requirement described in section six of this article.

40 (e) The applicant has passed a written test that meets  
41 the test requirement described in section seven of this  
42 article.

43 (f) The applicant has met the surety bond requirement as  
44 required pursuant to section thirteen of this article.

**§31-17A-6. Prelicensing and relicensing education of loan  
originators.**

1 (a) To meet the prelicensing education requirement, a  
2 person must complete at least twenty hours of education  
3 approved in accordance with subsection (b) of this section,  
4 which shall include at least:

5 (1) Three hours of federal law and regulations;

6 (2) Three hours of ethics, which shall include instruction  
7 on fraud, consumer protection and fair lending issues;

8 (3) Two hours of training related to lending standards  
9 for the nontraditional mortgage product marketplace; and

10 (4) Two hours of training related to West Virginia  
11 mortgage and consumer laws or issues.

12 (b) For purposes of subsection (a) of this section,  
13 prelicensing education courses shall be reviewed and  
14 approved by the Nationwide Mortgage Licensing System  
15 and Registry based upon reasonable standards. Review  
16 and approval of a prelicensing education course shall  
17 include review and approval of the course provider.

18 (c) Nothing in this section precludes any prelicensing  
19 education course, as approved by the Nationwide Mort-  
20 gage Licensing System and Registry, that is provided by  
21 the employer of the applicant or an entity which is affili-



22 ated with the applicant by an agency contract, or any  
23 subsidiary or affiliate of such employer or entity.

24 (d) Prelicensing education may be offered either in a  
25 classroom, online or by any other means approved by the  
26 Nationwide Mortgage Licensing System and Registry.

27 (e) The prelicensing education requirements approved by  
28 the Nationwide Mortgage Licensing System and Registry  
29 in subdivisions (1), (2), (3) and (4), subsection (a) of this  
30 section for any state shall be accepted as credit towards  
31 completion of prelicensing education requirements in West  
32 Virginia.

33 (f) A person previously licensed under this article  
34 subsequent to July 1, 2009, applying to be licensed again  
35 must prove that they have completed all of the continuing  
36 education requirements for the year in which the license  
37 was last held.

**§31-17A-7. Testing of loan originators.**

1 (a) To meet the written test requirement, an individual  
2 must pass, in accordance with the standards established  
3 under this subsection, a qualified written test developed  
4 by the Nationwide Mortgage Licensing System and  
5 Registry and administered by a test provider approved by  
6 the Nationwide Mortgage Licensing System and Registry  
7 based upon reasonable standards.

8 (b) A written test may not be treated as a qualified  
9 written test for purposes of subsection (a) of this section  
10 unless the test adequately measures the applicant's  
11 knowledge and comprehension in appropriate subject  
12 areas, including:

13 (1) Ethics;

14 (2) Federal law and regulation pertaining to mortgage  
15 origination;

16 (3) State law and regulation pertaining to mortgage  
17 origination; and

18 (4) Federal and state law and regulation, including  
19 instruction on fraud, consumer protection, the nontradi-  
20 tional mortgage marketplace and fair lending issues.

21 (c) Nothing in this section prohibits a test provider  
22 approved by the Nationwide Mortgage Licensing System  
23 and Registry from providing a test at the location of the  
24 employer of the applicant or the location of any subsidiary  
25 or affiliate of the employer of the applicant or the location  
26 of any entity with which the applicant holds an exclusive  
27 arrangement to conduct the business of a mortgage loan  
28 originator.

29 (d) An individual may not be considered to have passed  
30 a qualified written test unless the individual achieves a  
31 test score of not less than seventy-five percent correct  
32 answers to questions.

33 (e) An individual may retake a test three consecutive  
34 times with each consecutive taking occurring at least  
35 thirty days after the preceding test. After failing three  
36 consecutive tests, an individual must wait at least six  
37 months before taking the test again.

38 (f) A licensed mortgage loan originator who fails to  
39 maintain a valid license for a period of five consecutive  
40 years or longer must retake the test, not taking into  
41 account any time during which the individual is a regis-  
42 tered mortgage loan originator.

**§31-17A-8. Standards for license renewal.**

1 (a) The minimum standards for license renewal for  
2 mortgage loan originators shall include the following:

3 (1) The mortgage loan originator continues to meet the  
4 minimum standards for license issuance under section five  
5 of this article;

6 (2) The mortgage loan originator has satisfied the annual  
7 continuing education requirements described in section  
8 nine of this article; and

9 (3) The mortgage loan originator has paid all required  
10 fees for renewal of the license.

11 (b) The license of a mortgage loan originator failing to  
12 satisfy the minimum standards for license renewal shall  
13 expire. The commissioner may adopt procedures for the  
14 reinstatement of expired licenses consistent with the  
15 standards established by the Nationwide Mortgage  
16 Licensing System and Registry.

**§31-17A-9. Continuing education for mortgage loan origina-  
tors.**

1 (a) To meet the annual continuing education require-  
2 ments, a licensed mortgage loan originator must complete  
3 at least eight hours of education approved in accordance  
4 with subsection (b) of this section, which shall include at  
5 least:

6 (1) Three hours of federal law and regulations;

7 (2) Two hours of ethics, which shall include instruction  
8 on fraud, consumer protection and fair lending issues;

9 (3) Two hours of training related to lending standards  
10 for the nontraditional mortgage product marketplace; and

11 (4) One hour of West Virginia law or regulations.

12 (b) For purposes of subsection (a) of this section,  
13 continuing education courses shall be reviewed and  
14 approved by the Nationwide Mortgage Licensing System  
15 and Registry based upon reasonable standards. Review

16 and approval of a continuing education course shall  
17 include review and approval of the course provider.

18 (c) Nothing in this section precludes any education  
19 course, as approved by the Nationwide Mortgage Licens-  
20 ing System and Registry, that is provided by the employer  
21 of the mortgage loan originator or an entity which is  
22 affiliated with the mortgage loan originator by an agency  
23 contract, or any subsidiary or affiliate of the employer or  
24 entity.

25 (d) Continuing education may be offered either in a  
26 classroom, online or by any other means approved by the  
27 Nationwide Mortgage Licensing System and Registry.

28 (e) A licensed mortgage loan originator:

29 (1) Except for subsection (b), section eight of this article  
30 and subsection (i) of this section, may only receive credit  
31 for a continuing education course in the year in which the  
32 course is taken; and

33 (2) May not take the same approved course in the same  
34 or successive years to meet the annual requirements for  
35 continuing education.

36 (f) A licensed mortgage loan originator who is an  
37 approved instructor of an approved continuing education  
38 course may receive credit for the licensed mortgage loan  
39 originator's own annual continuing education requirement  
40 at the rate of two hours credit for every one hour taught.

41 (g) A person having successfully completed the educa-  
42 tion requirements approved by the Nationwide Mortgage  
43 Licensing System and Registry in subdivisions (1), (2) and  
44 (3), subsection (a) of this section for any state shall be  
45 accepted as credit towards completion of continuing  
46 education requirements in West Virginia.

47 (h) A licensed mortgage loan originator who subse-  
48 quently becomes unlicensed must complete the continuing  
49 education requirements for the last year in which the  
50 license was held prior to issuance of a new or renewed  
51 license.

52 (i) A person meeting the renewal requirements of  
53 subsections (a)(1) and (3) of section eight may make up any  
54 deficiency in continuing education as established by the  
55 commissioner.

**§31-17A-10. Authority to require license.**

1 In addition to any other duties imposed upon the  
2 commissioner by law, the commissioner shall require  
3 mortgage loan originators to be licensed and registered  
4 through the Nationwide Mortgage Licensing System and  
5 Registry. The commissioner is authorized to participate in  
6 the Nationwide Mortgage Licensing System and Registry  
7 to carry out this requirement. The commissioner may  
8 establish requirements as necessary, including, but not  
9 limited to:

10 (1) Background checks for:

11 (A) Criminal history through fingerprint or other  
12 databases;

13 (B) Civil or administrative records;

14 (C) Credit history; or

15 (D) Any other information as deemed necessary by the  
16 Nationwide Mortgage Licensing System and Registry.

17 (2) The payment of fees to apply for or renew licenses  
18 through the Nationwide Mortgage Licensing System and  
19 Registry;

20 (3) The setting or resetting as necessary of renewal or  
21 reporting dates;

22 (4) Requirements for amending or surrendering a  
23 license; and

24 (5) Any other activities the commissioner deems neces-  
25 sary for participation in the Nationwide Mortgage Licens-  
26 ing System and Registry.

**§31-17A-11. Nationwide Mortgage Licensing System and  
Registry information challenge process.**

1 The commissioner shall establish a process in accor-  
2 dance with the Administrative Procedures Act, provided  
3 in article five, chapter twenty-nine-a of this code, whereby  
4 mortgage loan originators may challenge information  
5 entered into the Nationwide Mortgage Licensing System  
6 and Registry by the commissioner.

**§31-17A-12. Enforcement authorities, violations and penalties.**

1 (a) To ensure the effective supervision and enforcement  
2 of this article, the commissioner may:

3 (1) Deny, suspend, revoke, condition or decline to renew  
4 a license issued under this article for a violation of this  
5 article or rules or order or directive entered under this  
6 article;

7 (2) Deny, suspend, revoke, condition or decline to renew  
8 a license if an applicant or licensee fails at any time to  
9 meet the requirements of section five or eight of this  
10 article, or withholds information or makes a material  
11 misstatement in an application for a license or renewal of  
12 a license;

13 (3) Order restitution against persons subject to this  
14 article for violations of this article;

15 (4) Impose civil administrative penalties on persons  
16 subject to this article pursuant to subsections (b), (c) and  
17 (d) of this section; and

18 (5) Issue orders or directives under this article as  
19 follows:

20 (A) Order or direct persons subject to this article to  
21 cease and desist from conducting business, including  
22 immediate temporary orders to cease and desist;

23 (B) Order or direct persons subject to this article to  
24 cease any harmful activities or violations of this article,  
25 including immediate temporary orders to cease and desist;

26 (C) Enter immediate temporary orders to cease business  
27 under a license or interim license issued pursuant to the  
28 authority granted under section three if the commissioner  
29 determines that such license was erroneously issued or the  
30 licensee is currently in violation of this article; and

31 (D) Order or direct such other affirmative action as the  
32 commissioner deems necessary.

33 (b) The commissioner may impose a civil administrative  
34 penalty on a mortgage loan originator or person subject to  
35 this article if the commissioner finds, on the record after  
36 notice and opportunity for hearing, that such mortgage  
37 loan originator or person subject to this article has vio-  
38 lated or failed to comply with any requirement of this  
39 article or any rule prescribed by the commissioner under  
40 this article or order issued under authority of this article.

41 (c) The maximum amount of penalty for each act or  
42 omission described in subsection (b) of this section shall be  
43 \$25,000.

44 (d) Each violation or failure to comply with any direc-  
45 tive or order of the commissioner is a separate and distinct  
46 violation or failure.

**§31-17A-13. Surety bond required.**

1 (a) Each mortgage loan originator must be covered by  
2 a surety bond in accordance with this section in favor of

3 the state for the benefit of consumers or for a claim by the  
4 commissioner for an unpaid civil administrative penalty or  
5 unpaid examination invoice. If the mortgage loan origina-  
6 tor is an employee or exclusive agent of a person subject to  
7 this article, article seventeen of this chapter, or article  
8 four, chapter forty-six-a of this code, the surety bond of  
9 those other such persons may be used in lieu of the mort-  
10 gage loan originator's individual surety bond requirement.

11 (1) The surety bond must provide coverage for each  
12 mortgage loan originator in an amount as prescribed in  
13 subsection (b) of this section.

14 (2) The surety bond shall be in a form as prescribed by  
15 the commissioner.

16 (3) The commissioner may promulgate rules with  
17 respect to the requirements for such surety bonds as are  
18 necessary to accomplish the purposes of this article.

19 (b) The penal sum of the surety bond shall be main-  
20 tained in an amount as required by article seventeen of  
21 this chapter for licensed mortgage lenders and brokers or  
22 article four, chapter forty-six-a of this code for regulated  
23 consumer lenders.

24 (c) When an action is commenced on a licensee's bond  
25 or any bond covering the activities of a licensee under this  
26 article, the commissioner may require the filing of a new  
27 bond.

28 (d) Immediately upon recovery upon any action on a  
29 bond covering any licensee under this article, a new bond  
30 shall be filed.

**§31-17A-14. Confidentiality.**

1 (a) Except as otherwise provided in Public Law  
2 110-289, Section 1512, the requirements under any federal



3 law or any provision of this code regarding the privacy or  
4 confidentiality of any information or material provided to  
5 the Nationwide Mortgage Licensing System and Registry,  
6 and any privilege arising under federal or state law,  
7 including the rules of any federal or state court, with  
8 respect to the information or material, shall continue to  
9 apply to the information or material after the information  
10 or material has been disclosed to the Nationwide Mortgage  
11 Licensing System and Registry. This information and  
12 material may be shared with all state and federal regula-  
13 tory officials with mortgage industry oversight authority  
14 without the loss of privilege or the loss of confidentiality  
15 protections provided by federal law or any provision of  
16 this code.

17 (b) For these purposes, the commissioner is authorized  
18 to enter agreements or sharing arrangements with other  
19 governmental agencies, the Conference of State Bank  
20 Supervisors, the American Association of Residential  
21 Mortgage Regulators or other associations representing  
22 governmental agencies as established by rule or order of  
23 the commissioner.

24 (c) Information or material that is subject to a privilege  
25 or confidentiality under subsection (a) of this section may  
26 not be subject to:

27 (1) Disclosure under any federal or state law governing  
28 the disclosure to the public of information held by an  
29 officer or an agency of the federal government or the  
30 respective state; or

31 (2) Subpoena or discovery, or admission into evidence,  
32 in any private civil action or administrative process, unless  
33 with respect to any privilege held by the Nationwide  
34 Mortgage Licensing System and Registry with respect to  
35 the information or material, the person to whom the  
36 information or material pertains waives, in whole or in  
37 part, in the discretion of that person, the privilege.

38 (d) Any provision of this code relating to the disclosure  
39 of confidential supervisory information or any information  
40 or material described in subsection (a) of this section that  
41 is inconsistent with said subsection shall be superseded by  
42 the requirements of this section.

43 (e) This section does not apply with respect to the  
44 information or material relating to the employment  
45 history of, and publicly adjudicated disciplinary and  
46 enforcement actions against, mortgage loan originators  
47 that is included in the Nationwide Mortgage Licensing  
48 System and Registry for access by the public.

**§31-17A-15. Investigation and examination authority.**

1 (a) For purposes of initial licensing, license renewal,  
2 license suspension, license conditioning, license revocation  
3 or termination, or general or specific inquiry or investiga-  
4 tion to determine compliance with this article, the com-  
5 missioner may access, receive and use any books, accounts,  
6 records, files, documents, information or evidence includ-  
7 ing, but not limited to:

8 (1) Criminal, civil and administrative history informa-  
9 tion, including nonconviction data;

10 (2) Personal history and experience information includ-  
11 ing independent credit reports obtained from a consumer  
12 reporting agency described in Section 603(p) of the Fair  
13 Credit Reporting Act; and

14 (3) Any other documents, information or evidence the  
15 commissioner deems relevant to the inquiry or investiga-  
16 tion regardless of the location, possession, control or  
17 custody of such documents, information or evidence.

18 (b) For the purposes of investigating violations or  
19 complaints arising under this article, or for the purposes  
20 of examination, the commissioner may review, investigate  
21 or examine any licensee, individual or person subject to

22 this article and his or her employer or sponsoring company  
23 as often as necessary. The commissioner may direct,  
24 subpoena or order the attendance of and examine under  
25 oath all persons whose testimony may be required about  
26 the loans or the business or subject matter of any such  
27 examination or investigation, and may direct, subpoena or  
28 order such person to produce books, accounts, records,  
29 files and any other documents the commissioner deems  
30 relevant to the inquiry.

31 (c) Each licensee, individual or person subject to this  
32 article, including his or her employer or sponsoring  
33 company, must make available to the commissioner upon  
34 request the books and records relating to the operations of  
35 the licensee, individual or person subject to this article.  
36 The commissioner shall have access to the books and  
37 records and interview the officers, principals, mortgage  
38 loan originators, employees, independent contractors,  
39 agents and customers of the licensee, individual or person  
40 subject to this article concerning their business.

41 (d) Each licensee, individual or person subject to this  
42 article, including his or her employer or sponsoring  
43 company, shall make or compile reports or prepare other  
44 information as directed by the commissioner in order to  
45 carry out the purposes of this section, including, but not  
46 limited to:

47 (1) Accounting compilations;

48 (2) Information lists and data concerning loan transac-  
49 tions in a format prescribed by the commissioner; or

50 (3) Such other information considered necessary to  
51 carry out the purposes of this section.

52 (e) In making any examination or investigation autho-  
53 rized by this article, the commissioner may control access  
54 to any documents and records of the licensee or person

55 under examination or investigation. The commissioner  
56 may take possession of the documents and records or place  
57 a person in exclusive charge of the documents and records  
58 in the place where they are usually kept. During the  
59 period of control, an individual or person may not remove  
60 or attempt to remove any of the documents and records  
61 except pursuant to a court order or with the consent of the  
62 commissioner. Unless the commissioner has reasonable  
63 grounds to believe the documents or records of the licensee  
64 have been, or are at risk of being, altered or destroyed for  
65 purposes of concealing a violation of this article, the  
66 licensee or owner of the documents and records shall have  
67 access to the documents or records as necessary to conduct  
68 its ordinary business affairs.

69 (f) In order to carry out the purposes of this section, the  
70 commissioner may:

71 (1) Retain attorneys, accountants or other professionals  
72 and specialists as examiners, auditors or investigators to  
73 conduct or assist in the conduct of examinations or  
74 investigations;

75 (2) Enter into agreements or relationships with other  
76 government officials or regulatory associations in order to  
77 improve efficiencies and reduce regulatory burden by  
78 sharing resources, standardized or uniform methods or  
79 procedures and documents, records, information or  
80 evidence obtained under this section;

81 (3) Use, hire, contract or employ public or privately  
82 available analytical systems, methods or software to  
83 examine or investigate the licensee, individual or person  
84 subject to this article;

85 (4) Accept and rely on examination or investigation  
86 reports made by other government officials, within or  
87 without this state; or

88 (5) Accept audit reports made by an independent  
89 certified public accountant for the licensee, individual or  
90 person subject to this article in the course of that part of  
91 the examination covering the same general subject matter  
92 as the audit and may incorporate the audit report in the  
93 report of the examination, report of investigation or other  
94 writing of the commissioner.

95 (g) The authority of this section shall remain in effect  
96 whether a licensee, individual or person subject to this  
97 article acts or claims to act under any licensing or regis-  
98 tration law of this state or claims to act without that  
99 authority.

100 (h) A licensee, individual or person subject to investiga-  
101 tion or examination under this section may not knowingly  
102 withhold, abstract, remove, mutilate, destroy or secrete  
103 any books, records, computer records or other information.

**§31-17A-16. Prohibited acts and practices.**

1 It is a violation of this article for a person or individual  
2 subject to this article to:

3 (1) Directly or indirectly employ any scheme, device or  
4 artifice to defraud or mislead borrowers or lenders or to  
5 defraud any person.

6 (2) Engage in any unfair or deceptive practice toward  
7 any person.

8 (3) Obtain property by fraud or misrepresentation.

9 (4) Solicit or enter into a contract with a borrower that  
10 provides in substance that the person or individual subject  
11 to this article may earn a fee or commission through "best  
12 efforts" to obtain a loan even though no loan is actually  
13 obtained for the borrower.

14 (5) Solicit, advertise or enter into a contract for specific  
15 interest rates, points, or other financing terms unless the

16 terms are actually available at the time of soliciting,  
17 advertising or contracting.

18 (6) Conduct any business covered by this article without  
19 holding a valid license as required under this article, or  
20 assist or aide and abet any person in the conduct of  
21 business under this article without a valid license as  
22 required under this article.

23 (7) Fail to make disclosures as required by this article  
24 and any other applicable state or federal law including  
25 rules and regulations thereunder.

26 (8) Fail to comply with this article or rules promulgated  
27 under this article, or fail to comply with any other state or  
28 federal law, including the rules and regulations thereun-  
29 der, applicable to any business authorized or conducted  
30 under this article.

31 (9) Make, in any manner, any false or deceptive state-  
32 ment or representation with regard to the rates, points or  
33 other financing terms or conditions for a residential  
34 mortgage loan, or engage in bait and switch advertising.

35 (10) Negligently make any false statement or knowingly  
36 and willfully make any omission of material fact in  
37 connection with any information or reports filed with a  
38 governmental agency or the Nationwide Mortgage Licens-  
39 ing System and Registry or in connection with any investi-  
40 gation conducted by the commissioner or another govern-  
41 mental agency.

42 (11) Make any payment, threat or promise, directly or  
43 indirectly, to any person for the purposes of influencing  
44 the independent judgment of the person in connection  
45 with a residential mortgage loan, or make any payment  
46 threat or promise, directly or indirectly, to any appraiser  
47 of a property for the purposes of influencing the independ-

48 ent judgment of the appraiser with respect to the value of  
49 the property.

50 (12) Collect, charge, attempt to collect or charge or use  
51 or propose any agreement purporting to collect or charge  
52 any fee prohibited by this article.

53 (13) Cause or require a borrower to obtain property  
54 insurance coverage in an amount that exceeds the replace-  
55 ment cost of the improvements as established by the  
56 property insurer.

57 (14) Fail to truthfully account for moneys belonging to  
58 a party to a residential mortgage loan transaction.

**§31-17A-17. Report to mortgage licensing system and registry.**

1 The commissioner is required to report violations of this  
2 act, as well as enforcement actions and other relevant  
3 information to the Nationwide Mortgage Licensing System  
4 and Registry subject to the provisions of section fourteen  
5 of this article.

**§31-17A-18. Unique identifier shown.**

1 The unique identifier of any person originating a  
2 residential mortgage loan must be clearly shown on all  
3 residential mortgage loan application forms, solicitations  
4 or advertisements, including business cards or websites,  
5 and any other documents as established by rule or order of  
6 the commissioner.

**§31-17A-19. Severability.**

1 If any provision of this article or its application to any  
2 person or circumstance is held invalid, the remainder of  
3 the article or the application of the provision to other  
4 persons or circumstances is not affected.

**§31-17A-20. Effective date.**

1 The effective date of this article shall be July 1, 2009.

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

**ARTICLE 4. REGULATED CONSUMER LENDERS.**

**§46A-4-102. License to make regulated consumer loans.**

1 (1) The commissioner shall receive and act on all  
2 applications for licenses to make regulated consumer loans  
3 under this chapter. Applications shall be under oath, be  
4 filed in the manner prescribed by the commissioner and  
5 contain the information the commissioner requires to  
6 make an evaluation of the financial responsibility, experi-  
7 ence, character and fitness of the applicant and the  
8 findings required of him or her before he or she may issue  
9 a license. At the time of the filing of the application, the  
10 sum of \$750 shall be paid to the commissioner as an  
11 investigation fee.

12 (2) A license may not be issued to a supervised financial  
13 organization other than to one primarily engaged in the  
14 business of making consumer loans through offices located  
15 within this state or to one licensed under the provisions of  
16 the West Virginia Mortgage Loan Act as contained in  
17 article seventeen, chapter thirty-one of this code, or to any  
18 banking institution as defined by the provisions of section  
19 two, article one, chapter thirty-one-a of this code. A  
20 license will not be granted to any office located outside  
21 this state: *Provided*, That the limitation of licensing  
22 contained in this subsection does not prevent any super-  
23 vised financial organization from making regulated  
24 consumer loans when the applicable state or federal  
25 statute, law, rule or regulation permits. A license may not  
26 be issued to any person unless the commissioner, upon  
27 investigation, finds that the financial responsibility,



28 experience, character and fitness of the applicant, and of  
29 the members thereof (if the applicant is a copartnership or  
30 association) and of the officers and directors thereof (if the  
31 applicant is a corporation), are such as to command the  
32 confidence of the community and to warrant belief that  
33 the business will be operated honestly, fairly and effi-  
34 ciently, within the purposes of this chapter, and the  
35 applicant has available for the operation of the business at  
36 least \$10,000 in capital and has, for each specified location  
37 of operation, assets of at least \$2,000.

38 (3) Upon written request, the applicant is entitled to a  
39 hearing on the question of his or her qualifications for a  
40 license if: (a) The commissioner has notified the applicant  
41 in writing that his or her application has been denied; or  
42 (b) the commissioner has not issued a license within sixty  
43 days after the application for the license was filed. A  
44 request for a hearing may not be made more than fifteen  
45 days after the commissioner has mailed a writing to the  
46 applicant notifying him or her that the application has  
47 been denied and stating in substance the commissioner's  
48 findings supporting denial of the application.

49 (4) Not more than one place of business shall be main-  
50 tained under the same license, but the commissioner may  
51 issue more than one license to the same licensee upon  
52 compliance with all the provisions of this article governing  
53 an original issuance of a license for each such new license.  
54 Each license shall remain in full force and effect until  
55 surrendered, forfeited, suspended or revoked.

56 (5) Upon giving the commissioner at least fifteen days'  
57 prior written notice, a licensee may: (a) Change the  
58 location of any place of business located within a munici-  
59 pality to any other location within that same municipality;  
60 or (b) change the location of any place of business located  
61 outside of a municipality to a location no more than five  
62 miles from the originally licensed location, but in no case

63 may a licensee move any place of business located outside  
64 a municipality to a location within a municipality. A  
65 licensee may not move the location of any place of busi-  
66 ness located within a municipality to any other location  
67 outside of that municipality.

68 (6) A licensee may conduct the business of making  
69 regulated consumer loans only at or from a place of  
70 business for which he or she holds a license and not under  
71 any other name than that stated in the license.


72 (7) A license issued under the provisions of this section  
73 shall not be transferable or assignable.

74 (8) A licensee must be incorporated under the laws of  
75 this state. The licensee may, however, be a subsidiary of  
76 an out-of-state company or financial institution.

77 (9) All mortgage loan originators, as defined in article  
78 seventeen-a, chapter thirty-one of this code, who are  
79 employed by a licensed regulated consumer lender must be  
80 licensed and issued a unique identifier by the Nationwide  
81 Mortgage Licensing System and Registry pursuant to the  
82 requirements provided in article seventeen-a, chapter  
83 thirty-one of this code.

84 (10) All regulated consumer lenders must file with the  
85 commissioner a bond in favor of the state for the benefit of  
86 consumers or for a claim by the commissioner for an  
87 unpaid civil administrative penalty or an unpaid examina-  
88 tion invoice in the amount of \$100,000 for licensees with  
89 West Virginia mortgage loan originations of \$0 to \$3  
90 million, \$150,000 for West Virginia mortgage loan  
91 originations greater than \$3 million and up to \$10 million,  
92 and \$200,000 for West Virginia mortgage loan originations  
93 over \$10 million in a form and with conditions as the  
94 commissioner may prescribe and executed by a surety  
95 company authorized to do business in this state.


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

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 2009.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 5th  
Day of May, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 5 2009

Time 11:05 Am