

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2962**

4 (By Delegates Perry, Hartman, Moore, Reynolds,  
5 Hall, Walters, Miller, Azinger and Ashley)

6  
7 (Originating in the House Committee on Banking and Insurance)

8 [February 9, 2011]

9  
10 A BILL to amend and reenact §31-17-12 of the Code of West Virginia,  
11 1931, as amended, relating to imposition of a fine or penalty  
12 by the Commissioner of Banking on residential mortgage brokers  
13 and lenders for a violation of the West Virginia Residential  
14 Mortgage Lender, Broker and Servicer Act; increasing the  
15 maximum amount of a fine or penalty that may be imposed from  
16 \$1000 to \$2000 for each violation; removing the requirement of  
17 prior notification from the commissioner before a fine or  
18 penalty may be imposed upon an unlicensed person who engages  
19 in the business or holds himself or herself out to the public  
20 as a mortgage lender or mortgage broker; and clarifying that  
21 a fine or penalty may be imposed for a violation of the Act.

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

23 That §31-17-12 of the Code of West Virginia, 1931, as amended,  
24 be amended and reenacted to read as follows:

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

3 **§31-17-12. Grounds for suspension or revocation of license;**  
4 **suspension and revocation generally; reinstatement**  
5 **or new license; penalties and fines for violation**  
6 **of this article.**

7 (a) The commissioner may suspend or revoke any broker or  
8 lender license issued hereunder if he or she finds that the  
9 licensee or any owner, director, officer, member, partner,  
10 stockholder, employee or agent of the licensee:

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

14 (2) Has knowingly made any material misstatement in the  
15 application for the license;

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

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

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

22 (6) Has committed any fraud or engaged in any dishonest  
23 activities with respect to any mortgage loan business in this state

1 or failed to disclose any of the material particulars of any  
2 mortgage loan transaction in this state to anyone entitled to the  
3 information; or

4 (7) Has otherwise demonstrated bad faith, dishonesty or any  
5 other quality indicating that the business of the licensee in this  
6 state has not been or will not be conducted honestly or fairly  
7 within the purpose of this article. It shall be a demonstration of  
8 bad faith and an unfair or deceptive act or practice to engage in  
9 a pattern of making loans where the consumer has insufficient  
10 sources of income to timely repay the debt and the lender had the  
11 primary intent to acquire the property upon default rather than to  
12 derive profit from the loan. This section may not limit any right  
13 the consumer may have to bring an action for a violation of section  
14 one hundred four, article six, chapter forty-six-a of this code in  
15 an individual case.

16 The commissioner may also suspend or revoke the license of a  
17 licensee if he or she finds the existence of any ground upon which  
18 the license could have been refused or any ground which would be  
19 cause for refusing a license to the licensee were he or she then  
20 applying for the same. The commissioner may also suspend or revoke  
21 the license of a licensee pursuant to his or her authority under  
22 section thirteen, article two, chapter thirty-one-a of this code.

23 (b) The suspension or revocation of the license of any  
24 licensee does not impair or affect the obligation of any

1 preexisting lawful mortgage loan between the licensee and any  
2 obligor.

3 (c) The commissioner may reinstate a suspended license, or  
4 issue a new license to a licensee whose license has been revoked,  
5 if the grounds upon which any license was suspended or revoked have  
6 been eliminated or corrected and the commissioner is satisfied that  
7 the grounds are not likely to recur.

8 (d) In addition to the authority conferred under this section,  
9 the commissioner may impose a fine or penalty not exceeding ~~\$1000~~  
10 \$2,000 upon any lender or broker required to be licensed under this  
11 ~~chapter~~ article who the commissioner determines has violated any of  
12 the provisions of this ~~chapter~~ article. For the purposes of this  
13 section, each separate violation is subject to the fine or penalty  
14 ~~herein prescribed and~~ provided in this section. Each day ~~after the~~  
15 ~~date of notification,~~ excluding Sundays and holidays, that an  
16 unlicensed person engages in the business or holds himself or  
17 herself out to the general public as a mortgage lender or broker  
18 ~~shall constitute~~ is a separate violation.

NOTE: The purpose of this bill is to increase the amount of a fine or penalty the Commissioner of Banking may impose on residential mortgage brokers and lenders for violations of this article.

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

