

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5419

By Delegate Barnhart, Hott and Espinosa

By Request of the Division of Financial Institutions

[Introduced February 02, 2024; Referred to the
Committee on Banking and Insurance then the
Judiciary]

1 A BILL to amend and reenact §31-17-1, §31-17-3, and §31-17-4 of the Code of West Virginia,
 2 1931, as amended; to amend said code by adding thereto a new section, designated §31-
 3 17-4a, to amend and reenact §31-17-6, §31-17-7, and §31-17-11 of said code, and to
 4 amend said code by adding thereto a new section, designated §31-17A-9a, all relating to
 5 the licensure and regulation of mortgage brokers, lenders, and loan originators; updating
 6 definitions; eliminating outdated provisions; authorizing emergency rulemaking; permitting
 7 the Commissioner of Financial Institutions to participate in the multistate licensing and
 8 examination process; updating net worth requirements to use generally accepted
 9 accounting principles; providing information requirements for a change in control and
 10 updating the change in control process; specifying requirements for individuals in control of
 11 a licensee or applicant; confirming confidentiality of examination and licensee information
 12 but allowing release of aggregate data; permitting loan originators to conduct work at their
 13 residence if certain requirements are met; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

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

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

1 As used in this article:

2 (a) "Additional charges" means every type of charge arising out of the making or
 3 acceptance of a primary or subordinate mortgage loan, except finance charges, including, but not
 4 limited to, official fees and taxes, reasonable closing costs and certain documentary charges and
 5 insurance premiums and other charges which definition is to be read in conjunction with and
 6 permitted by §46A-3-109 of this code;

7 ~~(b) "Affiliated" means persons under the same ownership or management control. As to~~
 8 ~~corporations, limited liability companies or partnerships, where common owners manage or~~

9 ~~control a majority of the stock, membership interests or general partnership interests of one or~~
10 ~~more such corporations, limited liability companies or partnerships, those persons are considered~~
11 ~~affiliated. In addition, persons under the ownership or management control of the members of an~~
12 ~~immediate family shall be considered affiliated. For purposes of this section, "immediate family"~~
13 ~~means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child~~
14 ~~and grandchildren;~~

15 ~~(e)~~(b) "Amount financed" means the total of the following items to the extent that payment
16 is deferred:

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

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

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

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

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

25 (C) Additional charges permitted by this article;

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

27 ~~(e)~~(d) "Broker" means any person acting in the regular course of business who, for a fee or
28 commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange,
29 or originates or assigns a primary or subordinate mortgage loan between a lender and a borrower.

30 A person is considered to be acting in the regular course of business if he or she negotiates or
31 arranges, or offers to negotiate or arrange, or originates, processes or assigns any primary or
32 subordinate mortgage loans in any one calendar year; or if he or she seeks to charge a borrower or
33 receive from a borrower money or other valuable consideration in any primary or subordinate

34 mortgage transaction before completing performance of all broker services that he or she has
35 agreed to perform for the borrower;

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

38 ~~(g)~~(f)"Commissioner" means the Commissioner of Financial Institutions of this state;

39 (g) "Control" means:

40 (1)(A) The power to vote, directly or indirectly, at least 25 percent of voting shares or voting
41 interests of a licensee or person in control of a licensee;

42 (B) The power to elect or appoint a majority of key individuals or executive officers,
43 managers, directors, trustees, or other persons exercising managerial authority of a person in
44 control of a licensee; or

45 (C) The power to exercise, directly or indirectly, a controlling influence over the
46 management or policies of a licensee or person in control of a licensee.

47 (2) Rebuttable presumption of control:

48 (A) A person is presumed to exercise a controlling influence when the person holds the
49 power to vote, directly or indirectly, at least 10 percent of outstanding voting shares or voting
50 interests of a licensee or person in control of a licensee.

51 (B) A person presumed to exercise a controlling influence as defined in this section can
52 rebut the presumption of control if the person is a passive investor.

53 (3) For the purposes of determining the percentage of a person controlled by any other
54 person, the person's interest shall be aggregated with the interest of any other immediate family
55 member, including the person's spouse, parents, children, siblings, mothers-in-law, fathers-in-law,
56 sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and any other person who shares
57 such person's home.

58 (h) "Finance charge" means the sum of all interest and similar charges payable directly or

59 indirectly by the debtor imposed or collected by the lender incident to the extension of credit as
60 coextensive with the definition of "loan finance charge" set forth in §46A-1-102 of this code;

61 (i) "Key individual" means any individual ultimately responsible for establishing or directing
62 policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

63 ~~(i)~~(j) "Lender" means any person who makes or offers to make or accepts or offers to
64 accept or purchases or services any primary or subordinate mortgage loan in the regular course of
65 business. A person is considered to be acting in the regular course of business if he or she makes
66 or accepts, or offers to make or accept, any primary or subordinate mortgage loans in any one
67 calendar year.

68 "Lender" does not include any person who does not currently have and has never held a
69 residential mortgage lender license in this or in any other state and who makes no more than three
70 primary or subordinate mortgage loans in any calendar year to purchasers of any dwelling owned
71 by that person: *Provided*, That the person is required to report within 30 days of the date of the loan
72 any such mortgage loan to the Division of Financial Institutions on a form available from the
73 division upon request. Failure to timely report as required by this subsection may result in
74 imposition by the commissioner of a civil administrative penalty of up to \$250;

75 ~~(j)~~(k) "Licensee" means any person duly licensed by the commissioner under the
76 provisions of this article or article 17A of this chapter as a lender, broker or mortgage loan
77 originator;

78 ~~(k)~~(l) "Nationwide Mortgage Multistate Licensing System and Registry" means a mortgage
79 licensing system developed and maintained by the Conference of State Bank Supervisors and the
80 American Association of Residential Mortgage Regulators for the licensing and registration of
81 licensed mortgage brokers and lenders licensed under this article and mortgage loan originators
82 licensed under article 17A of this chapter;

83 ~~(l)~~(m) "Person" means an individual, partnership, association, trust, corporation or any

84 other legal entity, or any combination thereof;

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

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

94 ~~(o)~~(p) "Subordinate mortgage loan" means any loan primarily for personal, family or
95 household use that is secured by a mortgage, deed of trust or other equivalent consensual
96 security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act or
97 residential real estate upon which is constructed or intended to be constructed a dwelling and is
98 subject to the lien of one or more prior recorded mortgages or deeds of trust.

99 (q) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible
100 assets, less liabilities, as determined in accordance with United States generally accepted
101 accounting principles.

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

1 (a) It shall be the duty of the commissioner to enforce the provisions of this article and, to
2 implement and make effective such provisions, he or she is hereby authorized and empowered to
3 promulgate reasonable rules in accordance with the provisions of §29A-3-1 of this code and to
4 employ such personnel as may be necessary. The commissioner may promulgate emergency

5 rules pursuant to the provisions of §29A-3-15 of this code.

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

17 ~~(c) Mortgage lenders and brokers licensed pursuant to this article shall submit renewals for~~
18 ~~calendar year 2010 on or before October 1, 2009, in accordance with the amendments to this~~
19 ~~article and on a form prescribed by the commissioner. Beginning January 2, 2010, licensees shall~~
20 ~~transition to the Nationwide Mortgage Licensing System and Registry according to the terms~~
21 ~~established _____ by _____ 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 mortgage lender or mortgage broker,
2 the applicant shall, at a minimum, furnish to the Nationwide ~~Mortgage~~ Multistate Licensing System
3 and Registry information concerning the applicant's identity, including:

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

7 (2) Personal history and experience in a form prescribed by the Nationwide Mortgage
8 Multistate Licensing System and Registry and the commissioner, including the submission of
9 authorization for the Nationwide Mortgage Multistate Licensing System and Registry and the
10 commissioner to obtain:

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

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

15 (b) In order to reduce the points of contact which the Federal Bureau of Investigation may
16 have to maintain for purposes of this article, the commissioner may use the Nationwide Mortgage
17 Multistate Licensing System and Registry or its designated vendor as a channeling agent for
18 requesting information from and distributing information to the Department of Justice or any
19 governmental agency.

20 (c) In order to reduce the points of contact which the commissioner may have to maintain,
21 for purposes of this article, the commissioner may use the Nationwide Mortgage Multistate
22 Licensing System and Registry as a channeling agent for requesting and distributing information
23 to and from any source so directed by the commissioner.

24 (d) Application for a lender's or broker's license shall each year be submitted under oath, in
25 the form prescribed by the commissioner. ~~, and shall contain the full name and address of the~~
26 ~~applicant and, if the applicant is a partnership, limited liability company or association, of every~~
27 ~~member thereof, and, if a corporation, of each officer, director and owner of ten percent or more of~~
28 ~~the capital stock thereof and further information as the commissioner may reasonably require.~~

29 ~~Background and credit checks shall be conducted in accordance with this article. section for any~~
30 ~~officer, director or owner, directly or indirectly, of ten percent or more of the capital stock of a~~
31 ~~corporation or any member of a limited liability or partnership with, directly or indirectly, a ten 25~~
32 ~~percent or greater ownership interest. Any application shall also disclose the location at which the~~
33 ~~business of lender or broker is to be conducted.~~

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

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

37 (2) Submit proof that he or she has available for the operation of the business at the
38 location specified in the application tangible net worth of at least \$250,000 computed according to
39 the United States generally accepted accounting principles as shown by the most recent audited
40 financial statement;

41 (3) File an electronic surety bond through the Nationwide Multistate Licensing System and
42 Registry with the commissioner a bond in favor of the state for the benefit of consumers or for a
43 claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination
44 invoice in the amount of \$100,000 for licensees with West Virginia annual loan originations of \$0 to
45 \$3 million, \$150,000 for West Virginia annual loan originations greater than \$3 million and up to
46 \$10 million, and \$250,000 for West Virginia annual loan originations over \$10 million in a form and
47 with conditions as the commissioner may prescribe and executed by a surety company authorized
48 to do business in this state: *Provided*, That lender licensees who service West Virginia mortgage
49 loans shall file with the commissioner a bond under the same conditions listed above in the
50 amount of \$200,000;

51 (4) Pay to the commissioner a license fee of \$1,250 plus the actual cost of fingerprint
52 processing and the processing fees assessed by the Nationwide ~~Mortgage~~ Multistate Licensing
53 System and Registry. If the commissioner shall determine that an investigation outside this state is

54 required to ascertain facts or information relative to the applicant or information set forth in the
55 application, the applicant may be required to advance sufficient funds to pay the estimated cost of
56 the investigation. An itemized statement of the actual cost of the investigation outside this state
57 shall be furnished to the applicant by the commissioner and the applicant shall pay or shall have
58 returned to him or her, as the case may be, the difference between his or her payment in advance
59 of the estimated cost and the actual cost of the investigation; and

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

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

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

66 (2) Submit proof that he or she has available for the operation of the business at the
67 location specified in the application tangible net worth of at least \$10,000 computed according to
68 the United States generally accepted accounting principles as shown by the most recent audited
69 financial statement;

70 (3) File an electronic surety bond through the Nationwide Multistate Licensing System and
71 Registry with the commissioner a bond in favor of the state for the benefit of consumers or for a
72 claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination
73 invoice in the amount of \$50,000 for licensees with West Virginia loan originations of \$0 to \$3
74 million, \$75,000 for West Virginia loan originations greater than \$3 million and up to \$10 million,
75 and \$100,000 for West Virginia loan originations over \$10 million in a form and with conditions as
76 the commissioner may prescribe and executed by a surety company authorized to do business in
77 this state: *Provided*, That the bond must be in the amount of \$150,000 before a broker may
78 participate in a table-funded residential mortgage loan;

79 (4) Pay to the commissioner a license fee of \$350 plus the actual cost of fingerprint
80 processing and the processing fees assessed by the Nationwide ~~Mortgage~~ Multistate Licensing
81 System and Registry; and

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

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

87 (h) Nonresident lenders and brokers licensed under this article by their acceptance of the
88 license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the
89 service of process pursuant to §46A-2-137 of this code and §56-3-33 of this code.

90 (i) The commissioner may elect to reduce or waive the application fees, bond amounts and
91 net worth requirements imposed by this section for bona fide nonprofit corporations or other bona
92 fide nonprofit business entities, including community housing development organizations, whose
93 residential mortgage lending or brokering activities provide housing primarily to households or
94 persons below the HUD-established median income for their area of residence. Any waiver of fees
95 or other costs under this paragraph shall not be construed as a waiver of the duty to comply with all
96 other provisions of this article.

97 (j) Every broker and lender licensee shall pay a fee of \$5 for each residential mortgage loan
98 originated, made or brokered in a calendar year. This fee shall be paid annually for the benefit of
99 the Division of ~~Banking~~ Financial Institutions and remitted promptly through the Nationwide
100 Multistate Licensing System and Registry when the invoice is received. ~~with the report required~~
101 ~~pursuant to subsection (b), section eleven of this article for loans made, brokered or originated~~
102 ~~during the previous calendar year.~~ If a licensee ceases operation, it shall complete the Statistical
103 Activity Report and remit any fees due since the last reporting period when it relinquishes its

104 license when invoiced by the Division through the Nationwide Multistate Licensing System and
105 Registry.

106 (k) If a claim for a consumer restitution is pending on a bond required pursuant to this
107 section when the commissioner makes a claim for a civil administrative penalty or an unpaid
108 examination invoice, the consumer claim shall be resolved before any payments may be made for
109 an unpaid penalty or examination invoice.

§31-17-4a. Information requirements for certain individuals and change in control.

1 (a) Any individual in control of a licensee or applicant, any individual that seeks to acquire
2 control of a licensee, and each key individual shall furnish to the commissioner the following items:

3 (1) The individual's fingerprints for submission to the Federal Bureau of Investigation and
4 the commissioner for purposes of a national criminal history background check unless the person
5 currently resides outside of the United States and has resided outside of the United States for the
6 last 10 years;

7 (2) Personal history and experience in a form and in a medium prescribed by the
8 commissioner, to obtain the following:

9 (A) An independent credit report from a consumer reporting agency unless the individual
10 does not have a Social Security number, in which case this requirement shall be waived;

11 (B) Information related to any criminal convictions or pending charges; and

12 (C) Information related to any regulatory or administrative action and any civil litigation
13 involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of
14 fiduciary duty, or breach of contract.

15 (b) If the individual has resided outside of the United States at any time in the last 10 years,
16 the individual shall also provide an investigative background report prepared by an independent
17 search firm that meets the following requirements:

18 (1) At a minimum, the search firm shall:

19 (A) Demonstrate that it has sufficient knowledge, resources, and employs accepted and
20 reasonable methodologies to conduct the research of the background report; and

21 (B) Not be affiliated with or have an interest with the individual it is researching.

22 (2) At a minimum, the investigative background report shall be written in the English
23 language and shall contain the following:

24 (A) If available in the individual's current jurisdiction of residency, a comprehensive credit
25 report, or any equivalent information obtained or generated by the independent search firm to
26 accomplish such report, including a search of the court data in the countries, provinces, states,
27 cities, towns, and contiguous areas where the individual resided and worked;

28 (B) Criminal records information for the past 10 years, including, but not limited to, felonies,
29 misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities,
30 towns, and contiguous areas where the individual resided and worked;

31 (C) Employment history;

32 (D) Media history, including an electronic search of national and local publications, wire
33 services, and business applications; and

34 (E) Financial services-related regulatory history, including, but not limited to, money
35 transmission, securities, banking, insurance, and mortgage-related industries.

36 (c) Any person, or group of persons acting in concert, seeking to acquire control of a
37 licensee shall obtain the written approval of the commissioner prior to acquiring control. An
38 individual is not deemed to acquire control of a licensee and is not subject to these acquisition of
39 control provisions when that individual becomes a key individual in the ordinary course of
40 business.

41 (d) A person, or group of persons acting in concert, seeking to acquire control of a licensee
42 shall, in cooperation with the licensee, submit an application in a form and in a medium prescribed
43 by the commissioner.

44 (e) Upon request, the commissioner may permit a licensee or the person, or group of
45 persons acting in concert, to submit some or all information required by the commissioner without
46 using the Nationwide Multistate Licensing System and Registry.

47 (f) The application required by this section shall include information required for any new
48 key individuals that have not previously completed the requirements for a licensee.

49 (g) When an application for acquisition of control under this section appears to include all
50 the items and address all of the matters that are required, the application shall be considered
51 complete and:

52 (1) The commissioner shall approve or deny the application within 90 days after the
53 completion date; or

54 (2) If the application is not approved or denied within 90 days after the completion date, the
55 application is deemed approved, and the person, or group of persons acting in concert, are not
56 prohibited from acquiring control.

57 (3) The commissioner may extend the application period for good cause.

58 (h) A determination by the commissioner that an application is complete and is accepted
59 for processing means only that the application, on its face, appears to include all of the items and
60 address all of the matters that are required, and is not an assessment of the substance of the
61 application or of the sufficiency of the information provided.

62 (i) When an application is filed and considered complete, the commissioner shall
63 investigate the financial condition and responsibility, financial and business experience, character,
64 and general fitness of the person, or group of persons acting in concert, seeking to acquire control.
65 The commissioner shall approve an acquisition of control pursuant to this section if the
66 commissioner finds that all of the following conditions for the change in control have been fulfilled:

67 (1) The requirements of subsections (d) and (f) of this section have been met, as
68 applicable; and

69 (2) The financial condition and responsibility, financial and business experience,
70 competence, character, and general fitness of the person, or group of persons acting in concert,
71 seeking to acquire control, and the competence, experience, character, and general fitness of the
72 key individuals and persons that would be in control of the licensee after the acquisition of control
73 indicate that it is in the interest of the public to permit the person, or group of persons acting in
74 concert, to control the licensee.

75 (j) If an applicant avails itself or is otherwise subject to a multistate licensing process:

76 (1) The commissioner is authorized to accept the investigation results of a lead
77 investigative state if the lead investigative state has sufficient staffing, expertise, and minimum
78 standards; or

79 (2) If the division is a lead investigative state, the commissioner is authorized to investigate
80 the applicant and the time frames established by agreement through the multistate licensing
81 process.

82 (k) The commissioner shall issue a formal written notice of the denial of an application to
83 acquire control within 30 days of the decision to deny the application. The commissioner shall set
84 forth in the notice of denial the specific reasons for the denial of the application. An applicant
85 whose application is denied under this section may appeal the denial using the procedures set
86 forth in §31-17-14 of this code.

87 (l) The requirements of subsections (c) and (d) of this section do not apply to any of the
88 following:

89 (1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of
90 the shareholders or holders of voting shares or voting interests of a licensee or a person in control
91 of a licensee;

92 (2) A person that acquires control of a licensee by devise or descent;

93 (3) A person that acquires control of a licensee as a personal representative, custodian,

94 guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or
95 by operation of law;

96 (4) A person that is otherwise exempt under this article;

97 (5) A person that the commissioner determines is not subject to subsection (c) of this
98 section based on the public interest;

99 (6) A public offering of securities of a licensee or a person in control of a licensee; or

100 (7) An internal reorganization of a person in control of the licensee where the ultimate
101 person in control of the licensee remains the same.

102 (m) Persons in subdivisions (2), (3), (4), (6), or (7) of subsection (l) of this section in
103 cooperation with the licensee shall notify the commissioner within 15 days after the acquisition of
104 control.

105 (n) Streamlined acquisition of control:

106 (1) The requirements of subsections (c) and (d) of this section do not apply to a person that
107 has complied with and received approval to engage in mortgage activity under this article or was
108 identified as a person in control in a prior application filed with and approved by the commissioner
109 or pursuant to a multistate licensing process, *Provided, That:*

110 (A) The person has not had a license revoked or suspended or controlled a licensee that
111 has had a license revoked or suspended while the person was in control of the licensee in the
112 previous five years;

113 (B) If the person is a licensee, the person is well managed and has received at least a
114 satisfactory rating for compliance at its most recent examination by a reciprocal state or federal
115 agency approved by the Division if such rating was given;

116 (C) The licensee to be acquired is projected to meet the requirements of net worth and
117 surety bond after the acquisition of control is completed, and if the person acquiring control is a
118 licensee, that licensee is also projected to meet the requirements of net worth and surety bond

119 after the acquisition of control is completed;

120 (D) The licensee to be acquired will not implement any material changes to its business
121 plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that
122 licensee also will not implement any material changes to its business plan as a result of the
123 acquisition of control; and

124 (E) The person provides notice of the acquisition in cooperation with the licensee and
125 attests to the requirements in this subsection in a form and in a medium prescribed by the
126 commissioner.

127 (2) If the notice is not disapproved within 30 days after the date on which the notice was
128 determined to be complete, the notice is deemed approved.

129 (o) Before filing an application for approval to acquire control of a licensee, a person may
130 request in writing a determination from the commissioner as to whether the person would be
131 considered a person in control of a licensee upon consummation of a proposed transaction. If the
132 commissioner determines that the person would not be a person in control of a licensee, the
133 proposed person and transaction is not subject to the requirements of this section.

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

1 At all times, a lender and broker licensee shall: (1) Have available the tangible net worth
2 required by the provisions of section four of this article; (2) keep the bond required by said section
3 in full force and effect; and (3) if the licensee be a foreign corporation, remain qualified to transact
4 business in this state unless otherwise exempt.

§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 licensee may not offer a franchise
2 under that license to another person. The commissioner may allow licensees to have branch

3 offices without requiring additional licenses provided the location of all branch offices is registered
4 with the Division of ~~Banking~~ Financial Institutions by the licensee. Whenever a licensee changes
5 his or her place of business to a location other than that set forth in his or her license and branch
6 registration, he or she shall give written notice 30 days prior to such change to the commissioner
7 and pay a relocation fee of \$100 for each office relocation.

8 (b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire on
9 December 31 of each year and any license may be renewed each year in the same manner, for the
10 same license fee or fees specified above and upon the same basis as an original license is issued
11 in accordance with the provisions of this article. All applications for the renewal of licenses shall be
12 filed with the Nationwide ~~Mortgage~~ Multistate Licensing System and Registry according to the
13 renewal schedule published for the system, but no later than 60 days before the expiration thereof.

14 (c) Any change in control of a licensee whereby equitable interest of 50 percent or more is
15 transferred to an outside party, a new application must be submitted according to this article.

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

1 (a) Every lender and broker licensee shall maintain at his or her place of business in this
2 state, if any, or if he or she has no place of business in this state, at his or her principal place of
3 business outside this state, such books, accounts and records relating to all transactions within
4 this article as are necessary to enable the commissioner to enforce the provisions of this article. All
5 the books, accounts and records shall be preserved, exhibited to the commissioner and kept
6 available as provided herein for the reasonable period of time as the commissioner may by rules
7 require. The commissioner is hereby authorized to prescribe by rules the minimum information to
8 be shown in the books, accounts and records.

9 (b) Each licensee shall file a report through the Nationwide ~~Mortgage~~ Multistate Licensing
10 System and Registry under oath or affirmation concerning his or her business and operations in
11 this state for the defined reporting period established by the Nationwide ~~Mortgage~~ Multistate

12 Licensing System and Registry and on a date established by the Nationwide ~~Mortgage~~ Multistate
13 Licensing System and Registry. The commissioner may direct that the reports required by this
14 subsection and any other reports, data or information deemed necessary by the commissioner be
15 filed directly with the Division of Financial Institutions on a date to be determined by the
16 commissioner. The reports, data and information filed pursuant to this subsection are not public
17 records and may not be open to public inspection.

18 (c) The commissioner may, at his or her discretion, make or cause to be made an
19 examination of the books, accounts and records of every lender or broker licensee pertaining to
20 primary and subordinate mortgage loans made in this state under the provisions of this article, for
21 the purpose of determining whether each lender and broker licensee is complying with the
22 provisions hereof and for the purpose of verifying each lender or broker licensee's annual report. If
23 the examination is made outside this state, the licensee shall pay the cost thereof in like manner as
24 applicants are required to pay the cost of investigations outside this state.

25 (d) The commissioner shall publish annually a list of the licenses issued under this chapter
26 and shall direct consumers to public information available through the Nationwide ~~Mortgage~~
27 Multistate Licensing System and Registry.

28 (e) The commissioner may enter into cooperative and information-sharing agreements
29 with regulators in other states or with federal authorities to discharge his or her responsibilities
30 under this article and may cooperate with federal and state agencies in discharging the
31 commissioner's responsibilities under this article. The commissioner may:

32 (1) Arrange for the exchange of information among government officials concerning the
33 regulation of the mortgage industry;

34 (2) Cooperate in and coordinate training programs concerning the regulation of the
35 mortgage industry;

36 (3) Assist state and federal agencies in their enforcement and investigatory activities and

37 supply those agencies with documentation and information; and

38 (4) Share, leverage, and accept examination reports from other state regulatory agencies
39 that meet established and agreed upon uniform standards.

40 (f) Reports of investigation and examination, together with related documents and financial
41 information not normally available to the public that is submitted in confidence by a person
42 regulated under this article, including, but not limited to, that person's evaluation of the expected
43 outcome of pending litigation, are confidential and may not be disclosed to the public by the
44 commissioner or employees of the Division of Financial Institutions, and are not subject to the
45 state's freedom of information act. The commissioner may release information if:

46 (1) The commissioner finds that immediate and irreparable harm is threatened to the
47 licensee's customers or potential customers or the general public;

48 (2) The licensee consents before the release;

49 (3) The commissioner finds that release of the information is required in connection with a
50 hearing under this article, in which event information may be related to the parties of that hearing;

51 or

52 (4) The commissioner finds that the release is reasonably necessary for the protection of
53 the public and in the interest of justice, in which event information may be distributed to
54 representative of an agency, department, or instrumentality of this state, any other state, or the
55 federal government.

56 (g) Nothing in this section prevents release to the public of any list of licensees or
57 aggregated financial data for the licensees, prevents disclosure of information the presiding officer
58 considers relevant to the proper adjudication or administration of justice at public administrative or
59 judicial hearings, or prevent disclosure of information relative to supporting the issuance of any
60 administrative or judicial order.

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-9a. Permitting employees to work from alternate locations.

1 (a) Notwithstanding any provision of this article to the contrary, but subject to the
2 requirements of this section, employees of a West Virginia mortgage broker, lender, or servicer
3 licensee may perform work for the licensee at their residence: *Provided*, That nothing in this
4 subsection restricts employees of the licensee from conducting business at other locations for
5 limited periods of time. Any activity conducted by an employee of the West Virginia licensee shall
6 be considered, reported, and regulated as loans of the West Virginia licensee, regardless of the
7 employee's location during the activity.

8 (b) A licensee, prior to authorizing work by employees at a location other than the
9 licensee's designated place of business, shall ensure the following:

10 (1) No in-person customer interactions will be conducted at the other location;

11 (2) The other location is not designated as a business location to consumers or customers;

12 (3) Appropriate data security and privacy safeguards are in place for licensee and
13 consumer data, information, and records at the other location, including, but not limited to, the use
14 and maintenance of secure virtual private networks and maintenance of appropriate security
15 updates, patches, or other alterations to ensure the security of electronic devices;

16 (4) Appropriate risk-based monitoring and oversight processes of work performed by the
17 employees of a licensee at the other location are in place, and records of such monitoring and
18 processes are maintained;

19 (5) No consumer information or records are maintained at the other location;

20 (6) All consumer and licensee information and records remain accessible and available for
21 regulatory oversight and examinations;

22 (7) Employees are trained and keep confidential all conversations about, and with,
23 consumers that may be conducted at the other location; and

24 (8) The other location is a safe and secure workplace for employees.

25 (c) A licensee, prior to authorizing work at a location other than the licensee's designated
26 place of business, shall establish written policies and procedures to ensure compliance with the
27 requirements of subsection (b) of this section.

28 (d) A licensee that authorizes work at another location pursuant to this section shall:

29 (1) Periodically review and document compliance with the provisions of this section and
30 the written policies and procedures established pursuant to subsection (c) of this section as it
31 relates to every employee who works at another location;

32 (2) Certify annually that the provisions of this section have been met as to each employee
33 working at another location; and

34 (3) Provide proof of the periodic review and certification upon request by the Division of
35 Financial Institutions.

NOTE: The purpose of this bill is to update the law related to mortgage lender and broker regulation to align control of a licensee and key individuals with other regulatory programs, allow West Virginia to participate in and accept multistate examinations as well as application information and decisions to reduce regulatory burden on licensees, and bring West Virginia into conformity with a majority of jurisdictions by permitting remote work for mortgage loan originators.

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