
By: **Delegates Krysiak, Rosenberg, McIntosh, and Rawlings**
Introduced and read first time: February 21, 2000
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation - Mortgage Lending**

3 FOR the purpose of clarifying certain fees that may be charged by a mortgage broker;
4 prohibiting a mortgage broker from charging a certain finder's fee under certain
5 circumstances; prohibiting a mortgage broker from receiving any fee in the form
6 of a note, mortgage, or other evidence of indebtedness; prohibiting a certain
7 finder's fee from being charged unless it is pursuant to a certain written
8 agreement between the mortgage broker and the borrower; requiring that a copy
9 of the agreement be provided to the borrower within a certain period of time;
10 prohibiting a mortgage lender from undergoing a change in control unless the
11 mortgage lender takes certain actions; requiring the Commissioner of Financial
12 Regulation to approve or deny a request for a change in control within a certain
13 period of time; establishing a certain examination schedule for mortgage
14 lenders; increasing a certain examination fee; authorizing the Commissioner to
15 suspend or revoke the license of a mortgage lender if the mortgage lender is
16 convicted of certain crimes; requiring the Commissioner to consider certain
17 factors in determining whether a mortgage lender's license should be suspended
18 or revoked because the mortgage lender is convicted of certain crimes;
19 authorizing the Commissioner to impose a certain civil penalty under certain
20 circumstances; increasing certain criminal penalties for violations of certain
21 laws regulating mortgage lenders; making a criminal violation of certain
22 provisions of this Act subject to the concurrent jurisdiction of the District Court
23 and the circuit courts; defining a certain term; making certain technical and
24 stylistic changes; and generally relating to the regulation of mortgage brokers
25 and mortgage lenders.

26 BY repealing and reenacting, with amendments,
27 Article - Commercial Law
28 Section 12-804 and 12-805
29 Annotated Code of Maryland
30 (1990 Replacement Volume and 1999 Supplement)

31 BY repealing and reenacting, without amendments,
32 Article - Courts and Judicial Proceedings

1 Section 4-301(a)
2 Annotated Code of Maryland
3 (1998 Replacement Volume and 1999 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - Courts and Judicial Proceedings
6 Section 4-301(b)(12) and (13) and 4-302(a) and (d)
7 Annotated Code of Maryland
8 (1998 Replacement Volume and 1999 Supplement)

9 BY adding to
10 Article - Courts and Judicial Proceedings
11 Section 4-301(b)(14)
12 Annotated Code of Maryland
13 (1998 Replacement Volume and 1999 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Financial Institutions
16 Section 11-512, 11-515, 11-517, and 11-523
17 Annotated Code of Maryland
18 (1998 Replacement Volume and 1999 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Commercial Law**

22 12-804.

23 (a) A mortgage broker may charge a finder's fee not in excess of 8 percent of
24 the amount of the loan or advance.

25 (b) [A] IN ADDITION TO A FINDER'S FEE, A mortgage broker may charge [a
26 loan application fee not in excess of] A BORROWER FOR the actual cost of any
27 appraisal or credit report obtained by the mortgage broker.

28 (c) A mortgage broker obtaining a mortgage loan with respect to the same
29 property more than once within a 24-month period may charge a finder's fee only on
30 so much of the loan as is in excess of the initial loan.

31 (d) The provisions of this section do not apply to:

32 (1) The charging of fees and charges otherwise permitted under this
33 title; or

34 (2) Attorney's fees unless the attorney is functioning as a mortgage
35 broker.

1 (e) A mortgage broker may not charge a finder's fee in any transaction in
2 which [he] THE MORTGAGE BROKER OR AN OWNER, PART OWNER, PARTNER,
3 DIRECTOR, OFFICER, OR EMPLOYEE OF THE MORTGAGE BROKER is the lender[, a
4 partner of the lender, or is a part owner] OR AN OWNER, PART OWNER, PARTNER,
5 DIRECTOR, OFFICER, OR EMPLOYEE of the lender.

6 12-805.

7 (a) A mortgage broker may not receive [a finder's fee or loan application] ANY
8 fee in the form of a note, mortgage, or other evidence of indebtedness.

9 (b) Payment of the finder's fee to the mortgage broker out of the proceeds of
10 the loan is not considered as interest to the lender if the finder's fee is not in excess of
11 that permitted by this subtitle.

12 (c) If the finder's fee is paid from the proceeds of the loan, the lender shall
13 comply with the disclosure provisions of § 12-106 of this article or the federal Truth in
14 Lending Act and in addition shall advise the borrower, in writing, of [his] THE
15 BORROWER'S right to a refund of the finder's fee upon the exercise of any right of
16 rescission of the loan.

17 (d) (1) A finder's fee may not be charged unless it is pursuant to a
18 [separate] written agreement between the MORTGAGE broker and THE borrower
19 which is SEPARATE AND distinct from [the loan agreement] ANY OTHER DOCUMENT.

20 (2) The terms of the proposed agreement shall be disclosed to the
21 borrower before the MORTGAGE broker undertakes to assist the borrower in obtaining
22 a loan or advance of money and shall specify the amount of the finder's fee.

23 (3) A COPY OF THE AGREEMENT, DATED AND SIGNED BY THE
24 MORTGAGE BROKER AND THE BORROWER, SHALL BE PROVIDED TO THE BORROWER
25 WITHIN 10 BUSINESS DAYS AFTER THE DATE THE LOAN APPLICATION IS
26 COMPLETED.

27 **Article - Courts and Judicial Proceedings**

28 4-301.

29 (a) Except as provided in § 4-302 and § 3-804, the District Court has
30 exclusive original jurisdiction in a criminal case in which a person at least 16 years
31 old or a corporation is charged with violation of the vehicle laws, or the State Boat
32 Act, or rules and regulations adopted pursuant to it.

33 (b) Except as provided in § 4-302 of this subtitle, the District Court also has
34 exclusive original jurisdiction in a criminal case in which a person at least 18 years
35 old or a corporation is charged with:

36 (12) Violation of Article 27, § 388 of the Code; [or]

37 (13) Violation of Article 27, § 388A of the Code; OR

1 (14) VIOLATION OF TITLE 11, SUBTITLE 5 OF THE FINANCIAL
2 INSTITUTIONS ARTICLE.

3 4-302.

4 (a) Except as provided in § 4-301(b)(2), (6), (7), (8), (9), (10), (11), (12), [and]
5 (13), AND (14) of this subtitle, the District Court does not have jurisdiction to try a
6 criminal case charging the commission of a felony.

7 (d) (1) Except as provided in paragraph (2) of this subsection, the
8 jurisdiction of the District Court is concurrent with that of the circuit court in a
9 criminal case:

10 (i) In which the penalty may be confinement for three years or
11 more or a fine of \$2,500 or more; or

12 (ii) Which is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9),
13 (10), (11), (12), [and] (13), AND (14) of this subtitle.

14 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a
15 circuit court does not have jurisdiction to try a case charging a violation of Article 27,
16 § 287 of the Code.

17 (ii) A circuit court does have jurisdiction to try a case charging a
18 violation of Article 27, § 287 of the Code if the defendant:

- 19 1. Properly demands a jury trial;
- 20 2. Appeals as provided by law from a final judgment entered
21 in the District Court; or
- 22 3. Is charged with another offense arising out of the same
23 circumstances that is within a circuit court's jurisdiction.

24 **Article - Financial Institutions**

25 11-512.

26 (a) A licensee may not change the place of business for which a license is
27 issued unless the licensee:

- 28 (1) Notifies the Commissioner in writing of the proposed change; and
- 29 (2) Receives the written [consent] APPROVAL of the Commissioner.

30 (B) (1) A LICENSEE MAY NOT UNDERGO A CHANGE IN CONTROL UNLESS
31 THE LICENSEE:

32 (I) NOTIFIES THE COMMISSIONER IN WRITING OF THE PROPOSED
33 CHANGE;

1 (II) MAKES A WRITTEN REQUEST THAT THE COMMISSIONER
2 APPROVE THE PROPOSED CHANGE;

3 (III) PROVIDES ANY INFORMATION THE COMMISSIONER MAY
4 REQUIRE UNDER PARAGRAPH (3) OF THIS SUBSECTION; AND

5 (IV) RECEIVES THE WRITTEN APPROVAL OF THE COMMISSIONER.

6 (2) FOR PURPOSES OF THIS SUBSECTION:

7 (I) IF THE LICENSEE IS A CORPORATION, "CONTROL" MEANS
8 DIRECT OR INDIRECT OWNERSHIP OF, OR THE RIGHT TO CONTROL, 25% OR MORE OF
9 THE VOTING SHARES OF THE LICENSEE, OR THE ABILITY TO ELECT A MAJORITY OF
10 THE DIRECTORS OR OTHERWISE EFFECT A CHANGE IN POLICY; AND

11 (II) IF THE LICENSEE IS AN ENTITY OTHER THAN A CORPORATION,
12 "CONTROL" MEANS THE POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO
13 DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF THE
14 LICENSEE, WHETHER THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY
15 CONTRACT, OR OTHERWISE.

16 (3) THE COMMISSIONER MAY REQUIRE THE LICENSEE TO PROVIDE ANY
17 INFORMATION DEEMED NECESSARY TO DETERMINE WHETHER A NEW APPLICATION
18 IS REQUIRED BECAUSE OF A PROPOSED CHANGE IN CONTROL.

19 (4) THE COMMISSIONER SHALL APPROVE OR DENY A REQUEST FOR
20 APPROVAL OF A PROPOSED CHANGE IN CONTROL:

21 (I) WITHIN 60 DAYS AFTER THE DATE THE COMMISSIONER
22 RECEIVES THE REQUEST; OR

23 (II) IF THE COMMISSIONER REQUESTS INFORMATION FROM THE
24 LICENSEE UNDER PARAGRAPH (3) OF THIS SUBSECTION, WITHIN 60 DAYS AFTER THE
25 DATE THE INFORMATION IS RECEIVED BY THE COMMISSIONER.

26 [(b)] (C) Notwithstanding subsection (a)(2) of this section, if the
27 Commissioner does not approve or disapprove of the proposed change of place of
28 business within 30 days of the mailing of the notice required under subsection (a)(1)
29 of this section, the proposed change of place of business shall be deemed approved.

30 [(c)] (D) In addition to any sanctions which may be imposed under this
31 subtitle by the Commissioner, a licensee who fails to timely provide the notice
32 required under subsection (a)(1) OR (B)(1) of this section shall:

33 (1) For each such failure pay to the Commissioner a surcharge in the
34 amount of \$500; and

35 (2) File with the Commissioner an application for a new license, together
36 with all applicable application and investigation fees.

1 11-515.

2 (a) (1) The Commissioner shall examine the business of each licensee:

3 (i) In accordance with a schedule established by the Commissioner;
4 and

5 (ii) At any other time that the Commissioner reasonably considers
6 necessary.

7 (2) The schedule established by the Commissioner under paragraph
8 (1)(i) of this subsection shall:

9 (I) [take] TAKE into account:

10 [(i)] 1. The length of time the licensee has been engaged in
11 business as a mortgage lender;

12 [(ii)] 2. Any prior violations by the licensee of the mortgage
13 lending law or regulations;

14 [(iii)] 3. The nature and number of any complaints made against
15 the licensee; and

16 [(iv)] 4. The result of findings from any prior examination of the
17 licensee; AND

18 (II) PROVIDE THAT:

19 1. NEW LICENSEES SHALL BE EXAMINED WITHIN 18
20 MONTHS OF THE DATE THE LICENSE IS ISSUED; AND

21 2. EACH LICENSEE SHALL BE EXAMINED AT LEAST ONCE
22 DURING ANY 36-MONTH PERIOD.

23 (b) (1) Any person aggrieved by the conduct of a licensee under this subtitle
24 in connection with a mortgage loan may file a written complaint with the
25 Commissioner who shall investigate the complaint.

26 (2) The Commissioner may make any other investigation of any person if
27 the Commissioner has reasonable cause to believe that the person has violated any
28 provision of this subtitle, of any regulation adopted under this subtitle, or of any other
29 law regulating mortgage loan lending in the State.

30 (c) A licensee shall pay to the Commissioner a fee of not more than [\$100]
31 \$250 per day for each of the Commissioner's employees engaged in:

32 (1) An examination required under subsection (a)(1) of this section; and

33 (2) Any other examination or investigation conducted under this section
34 that results in the discovery of a violation of this subtitle by the licensee.

1 (d) In connection with an examination or investigation made under this
2 section, the Commissioner may:

3 (1) Examine the books and records of any licensee or of any other person
4 who the Commissioner believes has violated any provision of this subtitle, or any rule
5 or regulation adopted under this subtitle, or of any other law regulating mortgage
6 loan lending in the State;

7 (2) Subpoena documents or other evidence; and

8 (3) Summon and examine under oath any person whose testimony the
9 Commissioner requires.

10 (e) (1) If any person fails to comply with a subpoena or summons of the
11 Commissioner under this subtitle or to testify concerning any matter about which the
12 person may be interrogated under this subtitle, the Commissioner may file a petition
13 for enforcement with the circuit court for any county.

14 (2) On petition by the Commissioner, the court may order the person to
15 attend and testify or produce evidence.

16 11-517.

17 (a) Subject to the hearing provisions of § 11-518 of this subtitle, the
18 Commissioner may suspend or revoke the license of any licensee if the licensee or any
19 owner, director, officer, member, partner, stockholder, employee, or agent of the
20 licensee:

21 (1) Makes any material misstatement in an application for a license;

22 (2) [Has been convicted of any crime of moral turpitude] IS CONVICTED
23 UNDER THE LAWS OF THE UNITED STATES OR OF ANY STATE OF:

24 (I) A FELONY; OR

25 (II) A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE FITNESS
26 AND QUALIFICATION OF THE PERSON TO ENGAGE IN THE MORTGAGE LENDING
27 BUSINESS;

28 (3) In connection with any mortgage loan or loan application transaction:

29 (i) Commits any fraud;

30 (ii) Engages in any illegal or dishonest activities; or

31 (iii) Misrepresents or fails to disclose any material facts to anyone
32 entitled to that information;

33 (4) Violates any provision of this subtitle or any rule or regulation
34 adopted under it or any other law regulating mortgage loan lending in the State; or

1 (5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any
2 other quality that indicates that the business of the licensee has not been or will not
3 be conducted honestly, fairly, equitably, and efficiently.

4 (B) IN DETERMINING WHETHER THE LICENSE OF A LICENSEE SHOULD BE
5 SUSPENDED OR REVOKED FOR A REASON DESCRIBED IN SUBSECTION (A)(2) OF THIS
6 SECTION, THE COMMISSIONER SHALL CONSIDER:

7 (1) THE NATURE OF THE CRIME;

8 (2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES AUTHORIZED
9 BY THE LICENSE;

10 (3) WITH RESPECT TO A FELONY, THE RELEVANCE OF THE CONVICTION
11 TO THE FITNESS AND QUALIFICATION OF THE LICENSEE TO ENGAGE IN THE
12 MORTGAGE LENDING BUSINESS;

13 (4) THE LENGTH OF TIME SINCE THE CONVICTION; AND

14 (5) THE BEHAVIOR AND ACTIVITIES OF THE LICENSEE SINCE THE
15 CONVICTION.

16 [(b)] (C) (1) The Commissioner may enforce the provisions of this subtitle,
17 regulations adopted under § 11-503 OF THIS SUBTITLE, and the applicable provisions
18 of Title 12 of the [Maryland] Commercial Law Article by [issuing an order]:

19 (I) ISSUING AN ORDER:

20 [(i)] 1. To cease and desist from the violation and any further
21 similar violations; and

22 [(ii)] 2. Requiring the violator to take affirmative action to correct
23 the violation including the restitution of money or property to any person aggrieved
24 by the violation; AND

25 (II) IMPOSING A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH
26 VIOLATION.

27 (2) If a violator fails to comply with an order issued under [paragraph
28 (1)] PARAGRAPH (1)(I) of this subsection, the Commissioner may impose a civil penalty
29 [of up to] NOT EXCEEDING \$1,000 for each violation from which the violator failed to
30 cease and desist or for which the violator failed to take affirmative action to correct.

31 [(c)] (D) The Commissioner may file a petition in the circuit court for any
32 county seeking enforcement of an order issued under this section.

33 [(d)] (E) In determining the amount of financial penalty to be imposed under
34 subsection [(b)] (C) of this section, the Commissioner shall consider [the following]:

35 (1) The seriousness of the violation;

- 1 (2) The good faith of the violator;
- 2 (3) The violator's history of previous violations;
- 3 (4) The deleterious effect of the violation on the public and mortgage
4 industry;
- 5 (5) The assets of the violator; and
- 6 (6) Any other factors relevant to the determination of the financial
7 penalty.
- 8 11-523.

9 (a) Any person who willfully violates any provision of this subtitle or any rule
10 or regulation adopted under it is guilty of a [misdemeanor] FELONY and on
11 conviction is subject to a fine not exceeding [\$5,000] \$50,000 or imprisonment not
12 exceeding [1 year] 10 YEARS or both.

13 (b) Any unlicensed person who is not exempt from licensing under this
14 subtitle who makes or assists a borrower in obtaining a mortgage loan in violation of
15 this subtitle may collect only the principal amount of the loan and may not collect any
16 interest, costs, finder's fees, broker fees, or other charges with respect to the loan.

17 (c) Any mortgage lender or employee or agent of a mortgage lender who
18 willfully misappropriates or intentionally and fraudulently converts to the mortgage
19 lender's or to the mortgage lender's employee's or agent's own use moneys in excess of
20 \$300 rightfully belonging to a borrower, or who otherwise commits any fraudulent act
21 in the course of engaging in the mortgage lending business is guilty of a felony and on
22 conviction is subject to a fine not to exceed \$100,000 or imprisonment not exceeding
23 15 years or both.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2000.