

SENATE BILL 872

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12

2000 Regular Session
(01r3063)

ENROLLED BILL
-- Finance/Commerce and Government Matters --

Introduced by **Senators Kelley, Sfikas, McFadden, and Conway**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

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~~ a certain finder's fee agreement be provided to the borrower within a
10 certain period of time; prohibiting a mortgage lender from undergoing a change
11 in control unless the mortgage lender takes certain actions; requiring the
12 Commissioner of Financial Regulation to approve or deny a request for a change
13 in control within a certain period of time; establishing a certain examination
14 schedule for mortgage lenders; increasing a certain examination or investigation
15 fee; authorizing the Commissioner to suspend or revoke the license of a
16 mortgage lender if the mortgage lender is convicted of certain crimes; requiring
17 the Commissioner to consider certain factors in determining whether a

1 mortgage lender's license should be suspended or revoked ~~because~~ if the
2 mortgage lender is convicted of certain crimes; authorizing the Commissioner to
3 impose a certain civil penalty under certain circumstances; increasing certain
4 criminal penalties for violations of certain laws regulating mortgage lenders;
5 making a criminal violation of certain provisions of this Act subject to the
6 concurrent jurisdiction of the District Court and the circuit courts; defining a
7 certain term; making certain technical and stylistic changes; and generally
8 relating to the regulation of mortgage brokers and mortgage lenders.

9 BY repealing and reenacting, with amendments,
10 Article - Commercial Law
11 Section 12-804 and 12-805
12 Annotated Code of Maryland
13 (1990 Replacement Volume and 1999 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article - Courts and Judicial Proceedings
16 Section 4-301(a)
17 Annotated Code of Maryland
18 (1998 Replacement Volume and 1999 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Courts and Judicial Proceedings
21 Section 4-301(b)(12) and (13) and 4-302(a) and (d)
22 Annotated Code of Maryland
23 (1998 Replacement Volume and 1999 Supplement)

24 BY adding to
25 Article - Courts and Judicial Proceedings
26 Section 4-301(b)(14)
27 Annotated Code of Maryland
28 (1998 Replacement Volume and 1999 Supplement)

29 BY repealing and reenacting, with amendments,
30 Article - Financial Institutions
31 Section 11-512, 11-515, 11-517, and 11-523
32 Annotated Code of Maryland
33 (1998 Replacement Volume and 1999 Supplement)

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

1

Article - Commercial Law

2 12-804.

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

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

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

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

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

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

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

21 12-805.

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

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

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

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

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

4 (3) A COPY OF THE AGREEMENT, DATED AND SIGNED BY THE
 5 MORTGAGE BROKER AND THE BORROWER, SHALL BE PROVIDED TO THE BORROWER
 6 WITHIN 10 BUSINESS DAYS AFTER THE DATE THE LOAN APPLICATION IS
 7 COMPLETED.

8 **Article - Courts and Judicial Proceedings**

9 4-301.

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

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

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

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

19 (14) VIOLATION OF TITLE 11, SUBTITLE 5 OF THE FINANCIAL
 20 INSTITUTIONS ARTICLE.

21 4-302.

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

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

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

30 (ii) Which is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9),
 31 (10), (11), (12), [and] (13), AND (14) of this subtitle.

32 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a
 33 circuit court does not have jurisdiction to try a case charging a violation of Article 27,
 34 § 287 of the Code.

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

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

8 **Article - Financial Institutions**

9 11-512.

10 (a) (1) A licensee may not change the place of business for which a license is
11 issued unless the licensee:

12 ~~(+)~~ (I) Notifies the Commissioner in writing of the proposed change;
13 and

14 ~~(=)~~ (II) Receives the written [consent] APPROVAL of the Commissioner.

15 (2) WITHIN 60 DAYS AFTER RECEIVING A REQUEST FOR APPROVAL OF A
16 PROPOSED CHANGE IN THE PLACE OF BUSINESS FOR A LICENSEE, THE
17 COMMISSIONER SHALL APPROVE OR DENY THE REQUEST.

18 (3) IF THE COMMISSIONER DOES NOT APPROVE OR DENY A REQUEST
19 FOR APPROVAL OF A PROPOSED CHANGE IN THE PLACE OF BUSINESS FOR A
20 LICENSEE AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE REQUEST
21 SHALL BE DEEMED APPROVED.

22 (B) (1) A LICENSEE MAY NOT UNDERGO A CHANGE IN CONTROL UNLESS
23 THE LICENSEE:

24 (I) NOTIFIES THE COMMISSIONER IN WRITING OF THE PROPOSED
25 CHANGE;

26 (II) MAKES A WRITTEN REQUEST THAT THE COMMISSIONER
27 APPROVE THE PROPOSED CHANGE;

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

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

31 (2) FOR PURPOSES OF THIS SUBSECTION:

32 (I) IF THE LICENSEE IS A CORPORATION, "CONTROL" MEANS
33 DIRECT OR INDIRECT OWNERSHIP OF, OR THE RIGHT TO CONTROL, 25% OR MORE OF

1 THE VOTING SHARES OF THE LICENSEE, OR THE ABILITY TO ELECT A MAJORITY OF
2 THE DIRECTORS OR OTHERWISE EFFECT A CHANGE IN POLICY; AND

3 (II) IF THE LICENSEE IS AN ENTITY OTHER THAN A CORPORATION,
4 "CONTROL" MEANS THE POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO
5 DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF THE
6 LICENSEE, WHETHER THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY
7 CONTRACT, OR OTHERWISE.

8 (3) WITHIN 60 DAYS AFTER RECEIVING A REQUEST FOR APPROVAL OF A
9 PROPOSED CHANGE IN CONTROL, THE COMMISSIONER MAY REQUIRE THE LICENSEE
10 TO PROVIDE ANY INFORMATION DEEMED NECESSARY TO DETERMINE WHETHER A
11 NEW APPLICATION IS REQUIRED BECAUSE OF A THE PROPOSED CHANGE IN
12 CONTROL.

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

15 (I) WITHIN 60 DAYS AFTER THE DATE THE COMMISSIONER
16 RECEIVES THE REQUEST; OR

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

20 (5) IF THE COMMISSIONER DOES NOT APPROVE OR DENY A REQUEST
21 FOR APPROVAL OF A PROPOSED CHANGE IN CONTROL AS PROVIDED UNDER
22 PARAGRAPH (4) OF THIS SUBSECTION, THE REQUEST SHALL BE DEEMED APPROVED.

23 ~~{(b)}~~ ~~(C)~~ ~~Notwithstanding subsection (a)(2) of this section, if the~~
24 ~~Commissioner does not approve or disapprove of the proposed change of place of~~
25 ~~business within 30 days of the mailing of the notice required under subsection (a)(1)~~
26 ~~of this section, the proposed change of place of business shall be deemed approved.~~

27 ~~{(c)}~~ ~~(D)~~ In addition to any sanctions which may be imposed under this
28 subtitle by the Commissioner, a licensee who fails to timely provide the notice
29 required under subsection (a)(1) OR (B)(1) of this section shall:

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

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

34 11-515.

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

36 (i) In accordance with a schedule established by the Commissioner;
37 and

1 (ii) At any other time that the Commissioner reasonably considers
2 necessary.

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

5 (I) [take] TAKE into account:

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

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

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

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

14 (II) PROVIDE THAT:

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

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

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

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

26 (c) A licensee shall pay to the Commissioner a fee of not more than [\$100]
27 \$250 per day for each of the Commissioner's employees engaged in:

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

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

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

33 (1) Examine the books and records of any licensee or of any other person
34 who the Commissioner believes has violated any provision of this subtitle, or any rule

1 or regulation adopted under this subtitle, or of any other law regulating mortgage
2 loan lending in the State;

3 (2) Subpoena documents or other evidence; and

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

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

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

12 11-517.

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

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

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

20 (I) A FELONY; OR

21 (II) A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE FITNESS
22 AND QUALIFICATION OF THE PERSON TO ENGAGE IN THE MORTGAGE LENDING
23 BUSINESS;

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

25 (i) Commits any fraud;

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

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

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

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

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

4 (1) THE NATURE OF THE CRIME;

5 (2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES AUTHORIZED
6 BY THE LICENSE;

7 (3) WITH RESPECT TO A FELONY, THE RELEVANCE OF THE CONVICTION
8 TO THE FITNESS AND QUALIFICATION OF THE LICENSEE TO ENGAGE IN THE
9 MORTGAGE LENDING BUSINESS;

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

11 (5) THE BEHAVIOR AND ACTIVITIES OF THE LICENSEE SINCE THE
12 CONVICTION.

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

16 (I) ISSUING AN ORDER:

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

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

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

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

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

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

32 (1) The seriousness of the violation;

33 (2) The good faith of the violator;

34 (3) The violator's history of previous violations;

- 1 (4) The deleterious effect of the violation on the public and mortgage
2 industry;
- 3 (5) The assets of the violator; and
- 4 (6) Any other factors relevant to the determination of the financial
5 penalty.

6 11-523.

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

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

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

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