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By: **Senators Kelley, Sfikas, McFadden, and Conway**  
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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 27, 2000

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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  
18 mortgage lender's license should be suspended or revoked ~~because~~ if the  
19 mortgage lender is convicted of certain crimes; authorizing the Commissioner to  
20 impose a certain civil penalty under certain circumstances; increasing certain  
21 criminal penalties for violations of certain laws regulating mortgage lenders;  
22 making a criminal violation of certain provisions of this Act subject to the  
23 concurrent jurisdiction of the District Court and the circuit courts; defining a  
24 certain term; making certain technical and stylistic changes; and generally  
25 relating to the regulation of mortgage brokers and mortgage lenders.

26 BY repealing and reenacting, with amendments,

1 Article - Commercial Law  
2 Section 12-804 and 12-805  
3 Annotated Code of Maryland  
4 (1990 Replacement Volume and 1999 Supplement)

5 BY repealing and reenacting, without amendments,  
6 Article - Courts and Judicial Proceedings  
7 Section 4-301(a)  
8 Annotated Code of Maryland  
9 (1998 Replacement Volume and 1999 Supplement)

10 BY repealing and reenacting, with amendments,  
11 Article - Courts and Judicial Proceedings  
12 Section 4-301(b)(12) and (13) and 4-302(a) and (d)  
13 Annotated Code of Maryland  
14 (1998 Replacement Volume and 1999 Supplement)

15 BY adding to  
16 Article - Courts and Judicial Proceedings  
17 Section 4-301(b)(14)  
18 Annotated Code of Maryland  
19 (1998 Replacement Volume and 1999 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article - Financial Institutions  
22 Section 11-512, 11-515, 11-517, and 11-523  
23 Annotated Code of Maryland  
24 (1998 Replacement Volume and 1999 Supplement)

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

27 **Article - Commercial Law**

28 12-804.

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

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

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

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

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

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

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

11 12-805.

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

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

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

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

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

28 (3) A COPY OF THE AGREEMENT, DATED AND SIGNED BY THE  
29 MORTGAGE BROKER AND THE BORROWER, SHALL BE PROVIDED TO THE BORROWER  
30 WITHIN 10 BUSINESS DAYS AFTER THE DATE THE LOAN APPLICATION IS  
31 COMPLETED.

### 32 **Article - Courts and Judicial Proceedings**

33 4-301.

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

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

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

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

6 (14) VIOLATION OF TITLE 11, SUBTITLE 5 OF THE FINANCIAL  
 7 INSTITUTIONS ARTICLE.

8 4-302.

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

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

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

17 (ii) Which is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9),  
 18 (10), (11), (12), [and] (13), AND (14) of this subtitle.

19 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a  
 20 circuit court does not have jurisdiction to try a case charging a violation of Article 27,  
 21 § 287 of the Code.

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

24 1. Properly demands a jury trial;

25 2. Appeals as provided by law from a final judgment entered  
 26 in the District Court; or

27 3. Is charged with another offense arising out of the same  
 28 circumstances that is within a circuit court's jurisdiction.

29 **Article - Financial Institutions**

30 11-512.

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

33 ~~(+)~~ (1) Notifies the Commissioner in writing of the proposed change;  
 34 and

1           (2)       (II)       Receives the written [consent] APPROVAL of the Commissioner.

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

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

9       (B)       (1)       A LICENSEE MAY NOT UNDERGO A CHANGE IN CONTROL UNLESS  
10 THE LICENSEE:

11                   (I)       NOTIFIES THE COMMISSIONER IN WRITING OF THE PROPOSED  
12 CHANGE;

13                   (II)       MAKES A WRITTEN REQUEST THAT THE COMMISSIONER  
14 APPROVE THE PROPOSED CHANGE;

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

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

18       (2)       FOR PURPOSES OF THIS SUBSECTION:

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

23                   (II)       IF THE LICENSEE IS AN ENTITY OTHER THAN A CORPORATION,  
24 "CONTROL" MEANS THE POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO  
25 DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF THE  
26 LICENSEE, WHETHER THROUGH THE OWNERSHIP OF VOTING SECURITIES, BY  
27 CONTRACT, OR OTHERWISE.

28           (3)       WITHIN 60 DAYS AFTER RECEIVING A REQUEST FOR APPROVAL OF A  
29 PROPOSED CHANGE IN CONTROL, THE COMMISSIONER MAY REQUIRE THE LICENSEE  
30 TO PROVIDE ANY INFORMATION DEEMED NECESSARY TO DETERMINE WHETHER A  
31 NEW APPLICATION IS REQUIRED BECAUSE OF A THE PROPOSED CHANGE IN  
32 CONTROL.

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

35                   (I)       WITHIN 60 DAYS AFTER THE DATE THE COMMISSIONER  
36 RECEIVES THE REQUEST; OR

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

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

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

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

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

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

18 11-515.

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

20 (i) In accordance with a schedule established by the Commissioner;  
21 and

22 (ii) At any other time that the Commissioner reasonably considers  
23 necessary.

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

26 (I) [take] TAKE into account:

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

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

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

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

35 (II) PROVIDE THAT:

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

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

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

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

12       (c)       A licensee shall pay to the Commissioner a fee of not more than [\$100]  
13 \$250 per day for each of the Commissioner's employees engaged in:

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

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

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

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

23               (2)       Subpoena documents or other evidence; and

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

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

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

32 11-517.

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

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

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

4 (I) A FELONY; OR

5 (II) A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE FITNESS  
6 AND QUALIFICATION OF THE PERSON TO ENGAGE IN THE MORTGAGE LENDING  
7 BUSINESS;

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

9 (i) Commits any fraud;

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

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

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

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

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

21 (1) THE NATURE OF THE CRIME;

22 (2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES AUTHORIZED  
23 BY THE LICENSE;

24 (3) WITH RESPECT TO A FELONY, THE RELEVANCE OF THE CONVICTION  
25 TO THE FITNESS AND QUALIFICATION OF THE LICENSEE TO ENGAGE IN THE  
26 MORTGAGE LENDING BUSINESS;

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

28 (5) THE BEHAVIOR AND ACTIVITIES OF THE LICENSEE SINCE THE  
29 CONVICTION.

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

33 (I) ISSUING AN ORDER:

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

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

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

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

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

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

16                  (1)     The seriousness of the violation;

17                  (2)     The good faith of the violator;

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

19                  (4)     The deleterious effect of the violation on the public and mortgage  
20 industry;

21                  (5)     The assets of the violator; and

22                  (6)     Any other factors relevant to the determination of the financial  
23 penalty.

24 11-523.

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

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

33                  (c)     Any mortgage lender or employee or agent of a mortgage lender who  
34 willfully misappropriates or intentionally and fraudulently converts to the mortgage  
35 lender's or to the mortgage lender's employee's or agent's own use moneys in excess of  
36 \$300 rightfully belonging to a borrower, or who otherwise commits any fraudulent act

1 in the course of engaging in the mortgage lending business is guilty of a felony and on  
2 conviction is subject to a fine not to exceed \$100,000 or imprisonment not exceeding  
3 15 years or both.

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