

SENATE BILL 302

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2lr0022

By: **Chair, Finance Committee (By Request – Departmental – Labor,
Licensing and Regulation)**

Introduced and read first time: January 27, 2012

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Financial Institutions – Commissioner of Financial Regulation –**
3 **Investigative and Enforcement Powers and Regulation of Mortgage Lenders**

4 FOR the purpose of repealing a certain provision of law that prohibits the
5 Commissioner of Financial Regulation from exercising certain investigative and
6 enforcement powers in connection with affiliates of certain financial
7 institutions; repealing a certain provision of law that exempts a person who
8 makes a certain number of mortgage loans per calendar year or brokers no more
9 than one mortgage loan per calendar year from the Maryland Mortgage Lender
10 Law; repealing a certain provision of law that exempts certain subsidiaries and
11 affiliates of certain federal financial institutions and of certain out-of-state
12 banks from the Maryland Mortgage Lender Law; repealing a certain definition;
13 making a stylistic change; providing for a delayed effective date; and generally
14 relating to the investigative and enforcement powers of the Commissioner of
15 Financial Regulation and the regulation of mortgage lenders.

16 BY repealing and reenacting, with amendments,
17 Article – Financial Institutions
18 Section 2–113 and 11–502
19 Annotated Code of Maryland
20 (2011 Replacement Volume and 2011 Supplement)

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

23 **Article – Financial Institutions**

24 2–113.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(a) [In this section, “affiliate” has the meaning stated in § 5–401(b) of this article.

(b)] Except as provided in subsection [(d)] (C) of this section, the investigative and enforcement powers of the Commissioner authorized under this subtitle are in addition to any investigative or enforcement powers of the Commissioner authorized under any other provision of law.

[(c)] (B) Beginning in fiscal year 2001, the Governor shall appropriate in the State budget in each fiscal year to the Division of Financial Regulation funding for the positions necessary to implement the investigative and enforcement powers authorized under this subtitle.

[(d)] (C) Except as provided in § 2–117 of this subtitle, the provisions of §§ 2–114 through 2–117, inclusive, of this subtitle do not apply to:

(1) Any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of this State or the United States that maintains its principal office in this State;

(2) Any out-of-state bank, as defined in § 5–1001 of this article, having a branch that accepts deposits in this State; **OR**

(3) Any institution incorporated under federal law as a savings association or savings bank that does not maintain its principal office in this State but has a branch that accepts deposits in this State[; or

(4) An affiliate of an institution described in item (1), (2), or (3) of this subsection].

11–502.

(a) In this section, “affiliate” means any company that controls, is controlled by, or is under common control with an institution described in subsection (c) of this section.

(b) The provisions of this subtitle do not apply to:

(1) Any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of this State or the United States or any other-state bank having a branch in this State;

(2) Any insurance company authorized to do business in the State;

(3) Any corporate instrumentality of the Government of the United States including:

1 (i) The Federal Home Loan Mortgage Corporation;

2 (ii) The Federal National Mortgage Association; and

3 (iii) The Government National Mortgage Association;

4 (4) [Any person who:

5 (i) Makes 3 or fewer mortgage loans per calendar year; and

6 (ii) Brokers no more than one mortgage loan per calendar year;

7 (5)] Any person who takes back a deferred purchase money mortgage
8 in connection with the sale of:

9 (i) A dwelling or residential real estate owned by, and titled in
10 the name of, that person; or

11 (ii) A new residential dwelling that the person built;

12 [(6)] (5) A nonprofit charitable organization registered with the
13 Maryland Secretary of State or a nonprofit religious organization;

14 [(7)] (6) An employer making a mortgage loan to an employee;

15 [(8)] (7) A person making a mortgage loan to a borrower who is the
16 person's spouse, child, child's spouse, parent, sibling, grandparent, grandchild, or
17 grandchild's spouse;

18 [(9)] (8) A real estate broker who:

19 (i) Is licensed in the State; and

20 (ii) Makes a mortgage loan providing a repayment schedule of 2
21 years or less to assist the borrower in the purchase or sale of a dwelling or residential
22 real estate through the broker;

23 [(10)] (9) A home improvement contractor licensed under the
24 Maryland Home Improvement Law who assigns a mortgage loan without recourse
25 within 30 days after completion of the contract to a person licensed under this subtitle
26 or to an institution that is exempt from this subtitle under item (1), (2), or [(11)] (10)
27 of this subsection;

28 [(11)] (10) A subsidiary or affiliate of an institution described in
29 subsection (c) of this section, which subsidiary or affiliate:

1 (i) Is subject to audit or examination by a regulatory body or
2 agency of this State[, the United States, or the state where the subsidiary or affiliate
3 maintains its principal office]; and

4 (ii) Files with the Commissioner, prior to making mortgage
5 loans, information sufficient to identify:

6 1. The correct corporate name of the subsidiary or
7 affiliate;

8 2. An address and telephone number of a contact person
9 for the subsidiary or affiliate;

10 3. A resident agent; and

11 4. Any additional information considered necessary by
12 the Commissioner for protection of the public;

13 ~~[(12)]~~ **(11)** Any employee benefit plan qualified under Internal Revenue
14 Code § 401 or persons acting as fiduciaries with respect to such a plan, making
15 mortgage loans solely to plan participants from plan assets; or

16 ~~[(13)]~~ **(12)** Employees acting within the scope of their employment
17 with:

18 (i) A licensed mortgage lender; or

19 (ii) A person who is exempt from licensure under this subtitle.

20 (c) The exemption in subsection ~~[(b)(11)]~~ **(B)(10)** of this section applies to
21 subsidiaries and affiliates of:

22 (1) Any] **ANY** bank, trust company, savings bank, savings and loan
23 association, or credit union incorporated or chartered under the laws of this State [or
24 the United States that maintains its principal office in this State;

25 (2) Any out-of-state bank, as that term is defined in § 5-1001 of this
26 article, having a branch that accepts deposits in this State; or

27 (3) Any institution incorporated under federal law as a savings
28 association or savings bank that does not maintain its principal office in this State but
29 has a branch that accepts deposits in this State].

30 (d) The exemptions provided in subsection (b) of this section do not apply to
31 any person who has been denied a license to engage in business as a mortgage lender

1 or real estate broker or whose license to engage in such activities has been suspended
2 or revoked within the 3 immediately preceding calendar years.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 January 1, 2013.