

SENATE BILL 302

I1

2lr0022

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

Introduced and read first time: January 27, 2012

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2012

CHAPTER _____

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

17 BY repealing and reenacting, with amendments,
18 Article – Financial Institutions
19 Section 2–113 and 11–502
20 Annotated Code of Maryland
21 (2011 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Financial Institutions**

4 2–113.

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

7 (b)~~¶~~ Except as provided in subsection ~~¶(d)~~ ~~¶(c)~~ of this section, the investigative
8 and enforcement powers of the Commissioner authorized under this subtitle are in
9 addition to any investigative or enforcement powers of the Commissioner authorized
10 under any other provision of law.

11 ~~¶(c)~~ ~~¶(b)~~ Beginning in fiscal year 2001, the Governor shall appropriate in
12 the State budget in each fiscal year to the Division of Financial Regulation funding for
13 the positions necessary to implement the investigative and enforcement powers
14 authorized under this subtitle.

15 ~~¶(d)~~ ~~¶(c)~~ Except as provided in § 2–117 of this subtitle, the provisions of §§
16 2–114 through 2–117, inclusive, of this subtitle do not apply to:

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

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

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

25 (4) An affiliate of an institution described in item (1), (2), or (3) of this
26 subsection OVER WHICH THE COMMISSIONER HAS NO JURISDICTION~~¶~~.

27 11–502.

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

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

- 1 (1) Any bank, trust company, savings bank, savings and loan
2 association, or credit union incorporated or chartered under the laws of this State or
3 the United States or any other–state bank having a branch in this State;
- 4 (2) Any insurance company authorized to do business in the State;
- 5 (3) Any corporate instrumentality of the Government of the United
6 States including:
- 7 (i) The Federal Home Loan Mortgage Corporation;
- 8 (ii) The Federal National Mortgage Association; and
- 9 (iii) The Government National Mortgage Association;
- 10 (4) [Any person who:
- 11 (i) Makes 3 or fewer mortgage loans per calendar year; and
- 12 (ii) Brokers no more than one mortgage loan per calendar year;
- 13 (5)] Any person who takes back a deferred purchase money mortgage
14 in connection with the sale of:
- 15 (i) A dwelling or residential real estate owned by, and titled in
16 the name of, that person; or
- 17 (ii) A new residential dwelling that the person built;
- 18 [[6]] (5) A nonprofit charitable organization registered with the
19 Maryland Secretary of State or a nonprofit religious organization;
- 20 [[7]] (6) An employer making a mortgage loan to an employee;
- 21 [[8]] (7) A person making a mortgage loan to a borrower who is the
22 person’s spouse, child, child’s spouse, parent, sibling, grandparent, grandchild, or
23 grandchild’s spouse;
- 24 [[9]] (8) A real estate broker who:
- 25 (i) Is licensed in the State; and
- 26 (ii) Makes a mortgage loan providing a repayment schedule of 2
27 years or less to assist the borrower in the purchase or sale of a dwelling or residential
28 real estate through the broker;

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

6 **[(11)] (10)** A subsidiary or affiliate of an institution described in
 7 subsection (c) of this section, which subsidiary or affiliate:

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

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

13 1. The correct corporate name of the subsidiary or
 14 affiliate;

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

17 3. A resident agent; and

18 4. Any additional information considered necessary by
 19 the Commissioner for protection of the public;

20 **[(12)] (11)** Any employee benefit plan qualified under Internal Revenue
 21 Code § 401 or persons acting as fiduciaries with respect to such a plan, making
 22 mortgage loans solely to plan participants from plan assets; or

23 **[(13)] (12)** Employees acting within the scope of their employment
 24 with:

25 (i) A licensed mortgage lender; or

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

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

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

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

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

6 (d) The exemptions provided in subsection (b) of this section do not apply to
7 any person who has been denied a license to engage in business as a mortgage lender
8 or real estate broker or whose license to engage in such activities has been suspended
9 or revoked within the 3 immediately preceding calendar years.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.