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HOUSE BILL NO. 2708

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking
on February 1, 2001)

(Patron Prior to Substitute—Delegate Clement)

A BILL to amend the Code of Virginia by adding a section numbered 6.1-422.1, relating to mortgage lending practices.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 6.1-422.1 as follows:

§ 6.1-422.1. "Flipping" and related actions prohibited.

A. As used in this section, "flipping" a mortgage loan means refinancing a mortgage loan within twelve months following the date the refinanced mortgage loan was originated, when the new loan does not result in any benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. A benefit to the borrower occurs in situations including, but not limited to, where (i) the borrower's monthly payment to pay the new consolidated debt will be lower than the total of all monthly obligations being financed, taking into account costs and fees; (ii) there is a change in the duration of the loan; (iii) the borrower receives cash in excess of the costs and fees as part of the refinancing; or (iv) there is a change from an adjustable to a fixed-rate loan, taking into account costs and fees. "Flipping" does not include any mortgage loan made after a borrower has initiated communications with a mortgage lender or broker for the purpose of obtaining a mortgage loan and the mortgage lender or broker has not communicated with or solicited such borrower, other than through a general medium, such as television, radio, newspaper or magazine, that does not target a specific borrower, before the time the borrower initiates such communication.

B. No mortgage lender shall knowingly or intentionally engage in the act or practice of "flipping" a mortgage loan. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed any limitation established pursuant to Article 9 (§ 6.1-330.69 et seq.) of Chapter 7.3 of this title.

C. No mortgage lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a mortgage loan that refinances all or any portion of such existing loan or debt.

D. The Attorney General, the Commission, or any party to a mortgage loan may enforce the provisions of this section.

E. In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that (i) the party charged with the violation has willfully engaged in the act or practice with which he was charged, and there was unwarranted refusal by such party to fully resolve the matter that constitutes the basis of such suit; or (ii) the party instituting the action knew, or should have known, that the action was frivolous and malicious.

F. The provisions of this section shall be in addition to, and shall not impair, the rights of and remedies available to borrowers in mortgage loans otherwise provided by law.