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SENATE BILL NO. 1170

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 20, 2009)

(Patron Prior to Substitute—Senator Watkins)

*A BILL to amend and reenact § 6.1-430 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 6.1-430.1, relating to the Mortgage Lender and Broker Act.***Be it enacted by the General Assembly of Virginia:****1. That § 6.1-430 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 6.1-430.1 as follows:**

§ 6.1-430. Authority of the Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a mortgage lender or broker licensed under this chapter is in violation, or has violated, any provision of Articles 3 (§ 6.1-330.53 et seq.) through 12 (§ 6.1-330.80 et seq.) of Chapter 7.3 of this title or § 6.1-422 or 6.1-422.1, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby authorized to seek to enjoin violations of such laws. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

Upon such referral of the Commission, the Attorney General may also seek, and the circuit court may order or decree damages and such other relief allowed by law, including restitution to the extent available to borrowers under applicable law. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

In any action brought by the Attorney General by virtue of the authority granted in this provision, the Attorney General shall be entitled to seek attorney's fees and costs.

B. The Attorney General shall be authorized to bring an action to enjoin violations of the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601 et seq., to the extent authorized by §§ 8 and 16 of RESPA, 12 U.S.C. §§ 2607 and 2614.

§ 6.1-430.1. *Prohibited practices; authority of the Attorney General.*

A. Notwithstanding whether a person is licensed, is required to be licensed, or is exempt from licensure under this chapter, and notwithstanding any other provision of the law to the contrary, no person that is engaged in the business of originating residential mortgage loans in the Commonwealth shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction.

B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of this section, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

C. The Attorney General may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth to enjoin any violation of this section. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages or intent be proved to establish a violation. The standard or proof at trial shall be preponderance of the evidence. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this section.

D. In any action brought under this section, if the court finds that a person has willfully engaged in a violation of this section, the Attorney General may recover, upon petition to the court, a civil penalty of not more than \$2,500 per violation.

E. In any action brought under this section, the Attorney General may recover damages and such other relief allowed by law, including restitution on behalf of borrowers injured by violations of this section as well as costs and reasonable expenses incurred by the Commonwealth in investigation and preparing the case, including attorney fees.

F. Unless the Attorney General determines that a person subject to the provisions of this section intends to depart from the Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or on a reasonable determination that irreparable harm may occur if immediate action is not taken, the Attorney General shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated, and allow such person a reasonable opportunity to appear before the Attorney General and show that a violation did not occur or execute an assurance of voluntary compliance or consent judgment.

G. Nothing in this section shall create a private right of action in favor of any individual aggrieved

60 *by a violation of this section.*