

# SENATE BILL 1091

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By: **Senator Klausmeier**

Introduced and read first time: February 28, 2014

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Financial Institutions – Transitional Mortgage Loan Originator Licenses**

3 FOR the purpose of authorizing the Commissioner of Financial Regulation to issue a  
4 transitional mortgage loan originator license to certain individuals under  
5 certain circumstances; requiring an applicant for a license to submit a certain  
6 application to the Commissioner and comply with certain conditions and  
7 provisions of the application; requiring an applicant for a license to pay a  
8 certain fee; specifying the content of a certain application; requiring an  
9 applicant for a license to comply with certain fingerprinting, criminal history  
10 records check, and surety bond requirements; prohibiting the Commissioner  
11 from issuing a license unless the Commissioner makes certain findings;  
12 providing that a license issued by the Commissioner under certain provisions of  
13 this Act authorizes an individual to act as a mortgage loan originator for a  
14 certain transitional period, is limited to a certain term, and may not be renewed  
15 or extended by the Commissioner; defining a certain term; and generally  
16 relating to the regulation of mortgage loan originators.

17 BY repealing and reenacting, with amendments,  
18 Article – Financial Institutions  
19 Section 11–601  
20 Annotated Code of Maryland  
21 (2011 Replacement Volume and 2013 Supplement)

22 BY repealing and reenacting, without amendments,  
23 Article – Financial Institutions  
24 Section 11–602  
25 Annotated Code of Maryland  
26 (2011 Replacement Volume and 2013 Supplement)

27 BY adding to  
28 Article – Financial Institutions

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 11–605.1  
2 Annotated Code of Maryland  
3 (2011 Replacement Volume and 2013 Supplement)

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

6 **Article – Financial Institutions**

7 11–601.

8 (a) In this subtitle the following words have the meanings indicated.

9 (b) “Borrower” has the meaning stated in § 11–501 of this title.

10 (c) “Clerical or support duties” includes the following activities relating to  
11 the processing or underwriting of a mortgage loan when performed subsequent to the  
12 receipt of a loan application:

13 (1) The receipt, collection, distribution, and analysis of information  
14 usual and customary for the processing or underwriting of a mortgage loan; and

15 (2) Communication with a consumer to obtain information necessary  
16 for the processing or underwriting of a mortgage loan, to the extent that the  
17 communication does not include offering or negotiating mortgage loan rates or terms,  
18 or counseling consumers about mortgage loan rates or terms.

19 (d) (1) “Depository institution” has the meaning stated in the Federal  
20 Deposit Insurance Act, 12 U.S.C. § 1813(c).

21 (2) “Depository institution” includes credit unions.

22 (e) “Federal banking agencies” means the Board of Governors of the Federal  
23 Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift  
24 Supervision, the National Credit Union Administration, and the Federal Deposit  
25 Insurance Corporation.

26 (f) “Fund” means the Mortgage Lender–Originator Fund established under §  
27 11–610 of this subtitle.

28 (g) “Immediate family member” means a spouse, child, sibling, parent,  
29 grandparent, grandchild, stepparent, stepchild, and stepsibling.

30 (h) “Independent contractor” means a person whose compensation is paid  
31 without a deduction for federal or State income tax.

32 (i) “Individual” means a natural person.

1 (j) "Individual loan servicer" means an individual who on behalf of a note  
2 holder or mortgage loan servicer:

3 (1) Collects or receives payments, including payments of principal,  
4 interest, escrow amounts, and other amounts due on existing mortgage loan  
5 obligations owed to the note holder or mortgage loan servicer, at a time when the  
6 borrower is in default, or in reasonably foreseeable likelihood of default; and

7 (2) Working with the borrower and the note holder or mortgage loan  
8 servicer, collects data and makes decisions to modify, either temporarily or  
9 permanently, the terms of the mortgage loan obligations described in item (1) of this  
10 subsection or to proceed with collection efforts through foreclosure or other processes.

11 (k) "License" means a license issued by the Commissioner under this  
12 subtitle.

13 (l) "Licensee" means an individual who is licensed by the Commissioner  
14 under this subtitle.

15 (m) "Loan application" has the meaning stated in § 11-501 of this title.

16 (n) "Mortgage lender" means a person that is licensed as a mortgage lender  
17 under Subtitle 5 of this title.

18 (o) "Mortgage lending business" has the meaning stated in § 11-501 of this  
19 title.

20 (p) "Mortgage loan" has the meaning stated in § 11-501 of this title.

21 (q) (1) "Mortgage loan originator" means an individual who for  
22 compensation or gain, or in the expectation of compensation or gain:

23 (i) Takes a loan application; or

24 (ii) Offers or negotiates terms of a mortgage loan.

25 (2) "Mortgage loan originator" does not include an individual who:

26 (i) Acts solely as a mortgage loan processor or underwriter;

27 (ii) Performs only real estate brokerage activities and is licensed  
28 in accordance with Title 17 of the Business Occupations and Professions Article,  
29 unless the individual is compensated by a mortgage lender, mortgage broker, or other  
30 mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or  
31 other mortgage loan originator; or

1 (iii) Is involved solely in extensions of credit relating to  
2 timeshare plans, as that term is defined in 11 U.S.C. § 101(53d).

3 (r) (1) “Mortgage loan processor or underwriter” means an individual who  
4 performs clerical or support duties as an employee of, at the direction of, and subject to  
5 the supervision and instruction of a person licensed, or exempt from licensing, under  
6 Title 5 of this article.

7 (2) “Mortgage loan processor or underwriter” does not include an  
8 individual who:

9 (i) Represents to the public, through advertising or other  
10 means of communication including the use of business cards, stationery, brochures,  
11 signs, rate lists, or other promotional items, that the individual can or will perform  
12 any of the activities of a mortgage loan originator; or

13 (ii) Performs mortgage loan processing or underwriting  
14 activities as an independent contractor.

15 (s) “Nationwide Mortgage Licensing System and Registry” has the meaning  
16 stated in § 11–501 of this title.

17 (t) “Nontraditional mortgage product” means any mortgage product other  
18 than a 30–year fixed rate mortgage loan.

19 (u) “Person” has the meaning stated in § 11–501 of this title.

20 (v) “Real estate brokerage activity” means any activity for which a license is  
21 required under Title 17 of the Business Occupations and Professions Article.

22 (w) “Registered mortgage loan originator” means any individual who:

23 (1) Is a mortgage loan originator;

24 (2) Is an employee of:

25 (i) A depository institution;

26 (ii) A subsidiary that is:

27 1. Owned and controlled by a depository institution; and

28 2. Regulated by a federal banking agency; or

29 (iii) An institution regulated by the Farm Credit Administration;

30 and

1           (3) Is registered with, and maintains a unique identifier through, the  
2 Nationwide Mortgage Licensing System and Registry.

3           (x) “Residential real estate” has the meaning stated in § 11–501 of this title.

4           **(Y) “TRANSITIONAL MORTGAGE LOAN ORIGINATOR LICENSE” MEANS A**  
5 **LICENSE ISSUED BY THE COMMISSIONER UNDER § 11–605.1 OF THIS SUBTITLE.**

6           **[(y)] (Z)** “Unique identifier” means a number or other identifier assigned by  
7 the Nationwide Mortgage Licensing System and Registry.

8 11–602.

9           (a) (1) The licensing provisions of this subtitle do not apply to  
10 independent contractors.

11           (2) Independent contractors are subject to the licensing provisions of  
12 Subtitle 5 of this title unless exempt from licensing under that subtitle.

13           (b) Unless exempted from this subtitle under subsection (d) of this section,  
14 an individual may not engage in the business of a mortgage loan originator unless the  
15 individual holds a valid license issued under this subtitle.

16           (c) Each licensee shall obtain and maintain a valid unique identifier issued  
17 by the Nationwide Mortgage Licensing System and Registry:

18           (1) On obtaining an initial or renewal license on or after July 1, 2009;  
19 or

20           (2) If the Commissioner has not joined the Nationwide Mortgage  
21 Licensing System and Registry as of July 1, 2009, on or after the date that the  
22 Commissioner joins, as instructed by the Commissioner by notice to the licensee.

23           (d) The following individuals are exempt from this subtitle:

24           (1) A registered mortgage loan originator, when acting for an entity  
25 described in § 11–601(w) of this subtitle;

26           (2) An individual who offers or negotiates the terms of a mortgage loan  
27 with or on behalf of an immediate family member of the individual;

28           (3) An individual who offers or negotiates the terms of a mortgage loan  
29 secured by a dwelling that served as the individual’s residence;

30           (4) A licensed attorney who negotiates the terms of a mortgage loan on  
31 behalf of a client as an ancillary matter to the attorney’s representation of the client,  
32 unless the attorney is compensated by a mortgage lender, a mortgage broker, or a

1 mortgage loan originator, or by an agent of a mortgage lender, mortgage broker, or  
2 mortgage loan originator; and

3 (5) Subject to subsection (e) of this section, an individual loan servicer.

4 (e) The exemption under subsection (d)(5) of this section is subject to  
5 modification by regulations that are adopted by the Commissioner and consistent with  
6 any applicable written interpretations of the federal Secure and Fair Enforcement for  
7 Mortgage Licensing Act of 2008 by the United States Department of Housing and  
8 Urban Development presented through commentaries, guidelines, rules, regulations,  
9 or interpretive letters.

10 (f) The Commissioner may adopt regulations to carry out this subtitle.

11 **11-605.1.**

12 (A) IN ANTICIPATION OF THE SATISFACTION OF ALL OF THE  
13 REQUIREMENTS NECESSARY TO OBTAIN A LICENSE AS A MORTGAGE LOAN  
14 ORIGINATOR UNDER THIS SUBTITLE, THE COMMISSIONER MAY ISSUE A  
15 TRANSITIONAL MORTGAGE LOAN ORIGINATOR LICENSE TO:

16 (1) AN INDIVIDUAL WHO HAS MAINTAINED A LICENSE TO  
17 ORIGINATE MORTGAGE LOANS UNDER THE LAWS OF ANOTHER STATE; OR

18 (2) TO THE EXTENT PERMITTED UNDER THIS SUBTITLE OR ANY  
19 REGULATIONS ADOPTED TO IMPLEMENT THIS SUBTITLE, AN INDIVIDUAL WHO  
20 WAS FORMERLY REGISTERED TO ORIGINATE MORTGAGE LOANS ON BEHALF OF  
21 A FINANCIAL INSTITUTION.

22 (B) TO APPLY FOR A TRANSITIONAL MORTGAGE LOAN ORIGINATOR  
23 LICENSE, AN APPLICANT SHALL:

24 (1) COMPLETE, SIGN, AND SUBMIT TO THE COMMISSIONER AN  
25 APPLICATION MADE UNDER OATH ON THE FORM THAT THE COMMISSIONER  
26 REQUIRES; AND

27 (2) COMPLY WITH ALL CONDITIONS AND PROVISIONS OF THE  
28 APPLICATION FOR A LICENSE.

29 (C) WITH EACH APPLICATION, THE APPLICANT SHALL PAY TO THE  
30 COMMISSIONER A NONREFUNDABLE LICENSE FEE IN AN AMOUNT SET BY THE  
31 COMMISSIONER.

32 (D) THE APPLICATION SHALL INCLUDE:

1           **(1) THE NAME AND RESIDENTIAL ADDRESS OF THE APPLICANT;**

2           **(2) THE ADDRESS OF THE APPLICANT'S EMPLOYER OR THE**  
3 **ADDRESS WHERE THE APPLICANT WILL ACT AS A TRANSITIONAL MORTGAGE**  
4 **LOAN ORIGINATOR;**

5           **(3) A CERTIFICATION THAT:**

6                   **(i) 1. THE APPLICANT WAS LICENSED TO ORIGINATE**  
7 **MORTGAGE LOANS UNDER THE LAWS OF ANOTHER STATE; OR**

8                               **2. TO THE EXTENT THE TRANSITIONAL MORTGAGE**  
9 **LOAN ORIGINATOR LICENSE IS BASED ON REGISTRATION UNDER FEDERAL LAW,**  
10 **THE APPLICANT WAS REGISTERED TO ORIGINATE MORTGAGE LOANS ON BEHALF**  
11 **OF A COVERED FINANCIAL INSTITUTION WITHIN THE 2-MONTH PERIOD**  
12 **IMMEDIATELY PRECEDING THE DATE OF THE FILING OF THE APPLICATION; AND**

13                               **(ii) THE APPLICANT ORIGINATED MORTGAGE LOANS UNDER**  
14 **A LICENSE OR REGISTRATION FOR A PERIOD OF NO LESS THAN 2 YEARS; AND**

15           **(4) AN ATTESTATION BY A SENIOR OFFICER OR PRINCIPAL OF A**  
16 **MORTGAGE LENDER OR MORTGAGE BROKER LICENSED UNDER SUBTITLE 5 OF**  
17 **THIS TITLE THAT THE APPLICANT CURRENTLY IS EMPLOYED BY THE LICENSEE.**

18           **(E) AN APPLICANT FOR A TRANSITIONAL MORTGAGE LOAN ORIGINATOR**  
19 **LICENSE SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS UNDER THIS**  
20 **SUBTITLE:**

21                   **(1) FINGERPRINTING AND A CRIMINAL HISTORY RECORDS**  
22 **CHECK; AND**

23                   **(2) SURETY BOND COVERAGE.**

24           **(F) THE COMMISSIONER MAY NOT ISSUE A TRANSITIONAL MORTGAGE**  
25 **LOAN ORIGINATOR LICENSE UNLESS THE COMMISSIONER MAKES, AT A**  
26 **MINIMUM, THE FOLLOWING FINDINGS:**

27                   **(1) THE APPLICANT HAS NEVER HAD A MORTGAGE LOAN**  
28 **ORIGINATOR LICENSE DENIED, REVOKED, OR SUSPENDED IN ANY FEDERAL,**  
29 **STATE, OR LOCAL JURISDICTION;**

1           **(2) THE APPLICANT HAS NOT BEEN CONVICTED OF, OR PLED**  
2 **GUILTY OR NOLO CONTENDERE TO, A FELONY IN A DOMESTIC, FOREIGN, OR**  
3 **MILITARY COURT; AND**

4           **(3) THE APPLICANT HAS A VALID UNIQUE IDENTIFIER.**

5           **(G) A LICENSE ISSUED UNDER THIS SECTION:**

6           **(1) AUTHORIZES AN INDIVIDUAL TO ACT AS A MORTGAGE LOAN**  
7 **ORIGINATOR FOR A TRANSITIONAL PERIOD DURING WHICH THE INDIVIDUAL**  
8 **PURSUES THE REQUIREMENTS TO BECOME A LICENSEE UNDER THIS SUBTITLE;**  
9 **AND**

10           **(2) IS LIMITED TO A TERM OF NO MORE THAN 6 MONTHS AND MAY**  
11 **NOT BE RENEWED OR EXTENDED BY THE COMMISSIONER.**

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2014.