

SENATE BILL 1091

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By: ~~Senator Klausmeier~~ Senators Klausmeier, Middleton, Astle, Feldman, Glassman, Kelley, Kittleman, Mathias, Pugh, and Ramirez

Introduced and read first time: February 28, 2014

Assigned to: Rules

Re-referred to: Finance, March 7, 2014

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 16, 2014

CHAPTER _____

1 AN ACT concerning

2 **Financial Institutions – ~~Transitional~~ Registered Mortgage Loan Originator**
3 **Originators – Expedited Licenses**

4 FOR the purpose of ~~authorizing~~ requiring the Commissioner of Financial Regulation
5 to ~~issue a transitional mortgage loan originator license to certain individuals~~
6 ~~under certain circumstances; requiring an applicant for a license to submit a~~
7 ~~certain application to the Commissioner and comply with certain conditions and~~
8 ~~provisions of the application; requiring an applicant for a license to pay a~~
9 ~~certain fee; specifying the content of a certain application; requiring an~~
10 ~~applicant for a license to comply with certain fingerprinting, criminal history~~
11 ~~records check, and surety bond requirements; prohibiting the Commissioner~~
12 ~~from issuing a license unless the Commissioner makes certain findings;~~
13 ~~providing that a license issued by the Commissioner under certain provisions of~~
14 ~~this Act authorizes an individual to act as a mortgage loan originator for a~~
15 ~~certain transitional period, is limited to a certain term, and may not be renewed~~
16 ~~or extended by the Commissioner; defining a certain term; waive a State~~
17 criminal history records check to expedite the issuance of a certain license to an
18 applicant who was employed as a registered mortgage loan originator within a
19 certain number of days before the date of application for the license under
20 certain circumstances; requiring the Commissioner to publish prominently on a
21 certain Web site the expedited process for the issuance of a certain license;
22 authorizing the Commissioner to adopt certain regulations; and generally
23 relating to the regulation of mortgage loan originators.

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 ~~BY repealing and reenacting, with amendments,~~
 2 ~~Article – Financial Institutions~~
 3 ~~Section 11-601~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2011 Replacement Volume and 2013 Supplement)~~

6 BY repealing and reenacting, without amendments,
 7 Article – Financial Institutions
 8 Section ~~11-602~~ 11-601
 9 Annotated Code of Maryland
 10 (2011 Replacement Volume and 2013 Supplement)

11 BY adding to
 12 Article – Financial Institutions
 13 Section ~~11-605.1~~ 11-612.3
 14 Annotated Code of Maryland
 15 (2011 Replacement Volume and 2013 Supplement)

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

18 **Article – Financial Institutions**

19 11-601.

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

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

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

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

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

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

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

1 (e) “Federal banking agencies” means the Board of Governors of the Federal
2 Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift
3 Supervision, the National Credit Union Administration, and the Federal Deposit
4 Insurance Corporation.

5 (f) “Fund” means the Mortgage Lender–Originator Fund established under §
6 11–610 of this subtitle.

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

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

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

12 (j) “Individual loan servicer” means an individual who on behalf of a note
13 holder or mortgage loan servicer:

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

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

22 (k) “License” means a license issued by the Commissioner under this
23 subtitle.

24 (l) “Licensee” means an individual who is licensed by the Commissioner
25 under this subtitle.

26 (m) “Loan application” has the meaning stated in § 11–501 of this title.

27 (n) “Mortgage lender” means a person that is licensed as a mortgage lender
28 under Subtitle 5 of this title.

29 (o) “Mortgage lending business” has the meaning stated in § 11–501 of this
30 title.

31 (p) “Mortgage loan” has the meaning stated in § 11–501 of this title.

32 (q) (1) “Mortgage loan originator” means an individual who for
33 compensation or gain, or in the expectation of compensation or gain:

- 1 (i) Takes a loan application; or
- 2 (ii) Offers or negotiates terms of a mortgage loan.
- 3 (2) “Mortgage loan originator” does not include an individual who:
- 4 (i) Acts solely as a mortgage loan processor or underwriter;
- 5 (ii) Performs only real estate brokerage activities and is licensed
6 in accordance with Title 17 of the Business Occupations and Professions Article,
7 unless the individual is compensated by a mortgage lender, mortgage broker, or other
8 mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or
9 other mortgage loan originator; or
- 10 (iii) Is involved solely in extensions of credit relating to
11 timeshare plans, as that term is defined in 11 U.S.C. § 101(53d).
- 12 (r) (1) “Mortgage loan processor or underwriter” means an individual who
13 performs clerical or support duties as an employee of, at the direction of, and subject to
14 the supervision and instruction of a person licensed, or exempt from licensing, under
15 Title 5 of this article.
- 16 (2) “Mortgage loan processor or underwriter” does not include an
17 individual who:
- 18 (i) Represents to the public, through advertising or other
19 means of communication including the use of business cards, stationery, brochures,
20 signs, rate lists, or other promotional items, that the individual can or will perform
21 any of the activities of a mortgage loan originator; or
- 22 (ii) Performs mortgage loan processing or underwriting
23 activities as an independent contractor.
- 24 (s) “Nationwide Mortgage Licensing System and Registry” has the meaning
25 stated in § 11–501 of this title.
- 26 (t) “Nontraditional mortgage product” means any mortgage product other
27 than a 30–year fixed rate mortgage loan.
- 28 (u) “Person” has the meaning stated in § 11–501 of this title.
- 29 (v) “Real estate brokerage activity” means any activity for which a license is
30 required under Title 17 of the Business Occupations and Professions Article.
- 31 (w) “Registered mortgage loan originator” means any individual who:

- 1 (1) Is a mortgage loan originator;
- 2 (2) Is an employee of:
- 3 (i) A depository institution;
- 4 (ii) A subsidiary that is:
- 5 1. Owned and controlled by a depository institution; and
- 6 2. Regulated by a federal banking agency; or
- 7 (iii) An institution regulated by the Farm Credit Administration;
- 8 and
- 9 (3) Is registered with, and maintains a unique identifier through, the
- 10 Nationwide Mortgage Licensing System and Registry.

11 (x) "Residential real estate" has the meaning stated in § 11-501 of this title.

12 ~~(y) "TRANSITIONAL MORTGAGE LOAN ORIGINATOR LICENSE" MEANS A~~

13 ~~LICENSE ISSUED BY THE COMMISSIONER UNDER § 11-605.1 OF THIS SUBTITLE.~~

14 ~~(y) (z)~~ "Unique identifier" means a number or other identifier assigned by

15 the Nationwide Mortgage Licensing System and Registry.

16 ~~11-602.~~

17 ~~(a) (1) The licensing provisions of this subtitle do not apply to~~

18 ~~independent contractors.~~

19 ~~(2) Independent contractors are subject to the licensing provisions of~~

20 ~~Subtitle 5 of this title unless exempt from licensing under that subtitle.~~

21 ~~(b) Unless exempted from this subtitle under subsection (d) of this section,~~

22 ~~an individual may not engage in the business of a mortgage loan originator unless the~~

23 ~~individual holds a valid license issued under this subtitle.~~

24 ~~(c) Each licensee shall obtain and maintain a valid unique identifier issued~~

25 ~~by the Nationwide Mortgage Licensing System and Registry.~~

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

27 ~~or~~

28 ~~(2) If the Commissioner has not joined the Nationwide Mortgage~~

29 ~~Licensing System and Registry as of July 1, 2009, on or after the date that the~~

30 ~~Commissioner joins, as instructed by the Commissioner by notice to the licensee.~~

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

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

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

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

~~(4) A licensed attorney who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator, or by an agent of a mortgage lender, mortgage broker, or mortgage loan originator; and~~

~~(5) Subject to subsection (c) of this section, an individual loan servicer.~~

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

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

~~11-605.1.~~

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

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

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

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

1 ~~(1) COMPLETE, SIGN, AND SUBMIT TO THE COMMISSIONER AN~~
2 ~~APPLICATION MADE UNDER OATH ON THE FORM THAT THE COMMISSIONER~~
3 ~~REQUIRES; AND~~

4 ~~(2) COMPLY WITH ALL CONDITIONS AND PROVISIONS OF THE~~
5 ~~APPLICATION FOR A LICENSE.~~

6 ~~(C) WITH EACH APPLICATION, THE APPLICANT SHALL PAY TO THE~~
7 ~~COMMISSIONER A NONREFUNDABLE LICENSE FEE IN AN AMOUNT SET BY THE~~
8 ~~COMMISSIONER.~~

9 ~~(D) THE APPLICATION SHALL INCLUDE:~~

10 ~~(1) THE NAME AND RESIDENTIAL ADDRESS OF THE APPLICANT;~~

11 ~~(2) THE ADDRESS OF THE APPLICANT'S EMPLOYER OR THE~~
12 ~~ADDRESS WHERE THE APPLICANT WILL ACT AS A TRANSITIONAL MORTGAGE~~
13 ~~LOAN ORIGINATOR;~~

14 ~~(3) A CERTIFICATION THAT:~~

15 ~~(i) 1. THE APPLICANT WAS LICENSED TO ORIGINATE~~
16 ~~MORTGAGE LOANS UNDER THE LAWS OF ANOTHER STATE; OR~~

17 ~~2. TO THE EXTENT THE TRANSITIONAL MORTGAGE~~
18 ~~LOAN ORIGINATOR LICENSE IS BASED ON REGISTRATION UNDER FEDERAL LAW,~~
19 ~~THE APPLICANT WAS REGISTERED TO ORIGINATE MORTGAGE LOANS ON BEHALF~~
20 ~~OF A COVERED FINANCIAL INSTITUTION WITHIN THE 2 MONTH PERIOD~~
21 ~~IMMEDIATELY PRECEDING THE DATE OF THE FILING OF THE APPLICATION; AND~~

22 ~~(ii) THE APPLICANT ORIGINATED MORTGAGE LOANS UNDER~~
23 ~~A LICENSE OR REGISTRATION FOR A PERIOD OF NO LESS THAN 2 YEARS; AND~~

24 ~~(4) AN ATTESTATION BY A SENIOR OFFICER OR PRINCIPAL OF A~~
25 ~~MORTGAGE LENDER OR MORTGAGE BROKER LICENSED UNDER SUBTITLE 5 OF~~
26 ~~THIS TITLE THAT THE APPLICANT CURRENTLY IS EMPLOYED BY THE LICENSEE.~~

27 ~~(E) AN APPLICANT FOR A TRANSITIONAL MORTGAGE LOAN ORIGINATOR~~
28 ~~LICENSE SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS UNDER THIS~~
29 ~~SUBTITLE:~~

30 ~~(1) FINGERPRINTING AND A CRIMINAL HISTORY RECORDS~~
31 ~~CHECK; AND~~

1 ~~(2) SURETY BOND COVERAGE.~~

2 ~~(F) THE COMMISSIONER MAY NOT ISSUE A TRANSITIONAL MORTGAGE~~
3 ~~LOAN ORIGINATOR LICENSE UNLESS THE COMMISSIONER MAKES, AT A~~
4 ~~MINIMUM, THE FOLLOWING FINDINGS:~~

5 ~~(1) THE APPLICANT HAS NEVER HAD A MORTGAGE LOAN~~
6 ~~ORIGINATOR LICENSE DENIED, REVOKED, OR SUSPENDED IN ANY FEDERAL,~~
7 ~~STATE, OR LOCAL JURISDICTION;~~

8 ~~(2) THE APPLICANT HAS NOT BEEN CONVICTED OF, OR PLED~~
9 ~~GUILTY OR NOLO CONTENDERE TO, A FELONY IN A DOMESTIC, FOREIGN, OR~~
10 ~~MILITARY COURT; AND~~

11 ~~(3) THE APPLICANT HAS A VALID UNIQUE IDENTIFIER.~~

12 ~~(G) A LICENSE ISSUED UNDER THIS SECTION:~~

13 ~~(1) AUTHORIZES AN INDIVIDUAL TO ACT AS A MORTGAGE LOAN~~
14 ~~ORIGINATOR FOR A TRANSITIONAL PERIOD DURING WHICH THE INDIVIDUAL~~
15 ~~PURSUES THE REQUIREMENTS TO BECOME A LICENSEE UNDER THIS SUBTITLE;~~
16 ~~AND~~

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

19 11-612.3.

20 (A) TO EXPEDITE THE ISSUANCE OF A LICENSE TO AN APPLICANT WHO,
21 WITHIN 45 DAYS BEFORE THE DATE OF APPLICATION FOR THE LICENSE, WAS
22 EMPLOYED AS A REGISTERED MORTGAGE LOAN ORIGINATOR, THE
23 COMMISSIONER SHALL WAIVE, AS APPLICABLE, THE STATE CRIMINAL HISTORY
24 RECORDS CHECK.

25 (B) THE COMMISSIONER SHALL PUBLISH PROMINENTLY ON THE
26 COMMISSIONER'S WEB SITE, OR HAVE PUBLISHED ON A THIRD-PARTY WEB
27 SITE USED FOR LICENSING MORTGAGE LOAN ORIGINATORS IN THE STATE, THE
28 EXPEDITED PROCESS FOR THE ISSUANCE OF A LICENSE UNDER THIS SECTION.

29 (C) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT
30 THIS SECTION.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.