

By: ~~Senator Astle~~ ~~Senators~~ ~~Astle and Exum~~

Introduced and read first time: February 4, 2005

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2005

CHAPTER _____

1 AN ACT concerning

Financial Institutions - Consumer Credit - Mortgage Originators

3 FOR the purpose of prohibiting an individual from acting as a mortgage originator on
4 or after a certain date unless the individual is a licensee or is exempt from
5 licensing under this Act; providing that a license issued under this Act
6 authorizes a licensee to act as a mortgage originator only when acting within the
7 scope of employment with a mortgage lender; prohibiting a licensee from
8 maintaining more than one license or being employed by more than one
9 mortgage lender; requiring the Commissioner of Financial Regulation in the
10 Department of Labor, Licensing, and Regulation to include certain items on each
11 license; prohibiting an individual from acting as a mortgage originator under a
12 name or for an employer that is different from the name and employer that
13 appear on the license unless certain conditions are met; authorizing the
14 issuance of a license to an individual employed by a mortgage lender, the
15 principal office of which is located outside the State, if certain conditions are
16 met; providing that a mortgage lender is not required to maintain an office in
17 the State if the laws of the state in which its principal office is located authorize
18 a mortgage lender from this State to engage in mortgage lending without
19 maintaining an office in that state; establishing certain qualifications for
20 obtaining a license; authorizing the Commissioner to deny an application for a
21 license under certain circumstances; establishing procedures for applying for a
22 license; requiring the Commissioner to conduct an investigation to determine if
23 an applicant meets certain requirements under this Act; requiring the
24 Commissioner to issue a license to an applicant who meets certain
25 requirements; establishing procedures for the approval, provisional approval,
26 provisional denial, and denial of an application; providing for the expiration of a
27 license; establishing procedures for renewal of a license; prohibiting the
28 Commissioner from refunding any part of a license an investigation fee under

1 certain circumstances; authorizing the Commissioner to determine that licenses
2 issued under this Act shall expire on a staggered basis; establishing a Mortgage
3 Lender-Originator Fund; providing that the Fund shall consist of certain items;
4 requiring the Commissioner to pay certain fines and penalties into the General
5 Fund of the State; establishing the purpose of the Fund; requiring the annual
6 State budget to include certain items; authorizing the making of certain
7 expenditures from the Fund under certain circumstances; requiring certain
8 amounts in the Fund to be carried forward under certain circumstances;
9 providing that the State Treasurer is the custodian of the Fund; providing that
10 the Fund is a special, nonlapsing fund that is not subject to certain provisions of
11 law; requiring the Governor to appropriate certain funds in a certain manner;
12 requiring the Commissioner to adopt certain regulations relating to continuing
13 education requirements; authorizing certain aggrieved persons to file a written
14 complaint with the Commissioner; requiring the Commissioner to investigate
15 the complaint; authorizing the Commissioner to make any other investigation of
16 a person under certain circumstances; requiring a licensee to pay to the
17 Commissioner a certain fee; establishing the Commissioner's examination and
18 enforcement powers; establishing certain notice and hearing requirements;
19 establishing certain penalties for a violation of this Act; providing that the
20 employment of a mortgage originator licensed under this Act by a mortgage
21 lender does not relieve the mortgage lender of certain responsibilities;
22 authorizing the Commissioner to adopt regulations to carry out this Act;
23 defining certain terms; and generally relating to mortgage originators.

24 BY adding to
25 Article - Financial Institutions
26 Section 11-517(f); and 11-601 through 11-618, inclusive, to be under the new
27 subtitle "Subtitle 6. Mortgage Originators"
28 Annotated Code of Maryland
29 (2003 Replacement Volume and 2004 Supplement)

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

32 **Article - Financial Institutions**

33 11-517.

34 (F) THE EMPLOYMENT OF A MORTGAGE ORIGINATOR LICENSED UNDER
35 SUBTITLE 6 OF THIS TITLE BY A MORTGAGE LENDER DOES NOT RELIEVE THE
36 MORTGAGE LENDER OF A RESPONSIBILITY UNDER THIS SUBTITLE, A RULE OR
37 REGULATION ADOPTED UNDER THIS SUBTITLE, OR A LAW GOVERNING MORTGAGE
38 LENDING IN THE STATE.

1 SUBTITLE 6. MORTGAGE ORIGINATORS.

2 11-601.

3 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.

5 (B) "BORROWER" HAS THE MEANING STATED IN § 11-501 OF THIS TITLE.

6 (C) "FUND" MEANS THE MORTGAGE LENDER-ORIGINATOR FUND
7 ESTABLISHED UNDER § 11-610 OF THIS SUBTITLE.8 (D) "INDEPENDENT CONTRACTOR" MEANS A PERSON WHOSE COMPENSATION
9 IS PAID WITHOUT A DEDUCTION FOR FEDERAL OR STATE INCOME TAX.10 (E) "LICENSE" MEANS A LICENSE ISSUED BY THE COMMISSIONER UNDER
11 THIS SUBTITLE.12 (F) (F) "LICENSEE" MEANS AN INDIVIDUAL WHO IS LICENSED BY THE
13 COMMISSIONER UNDER THIS SUBTITLE.14 (F) (G) "LOAN APPLICATION" HAS THE MEANING STATED IN § 11-501 OF THIS
15 TITLE.16 (G) (H) "MORTGAGE LENDER" MEANS A PERSON THAT IS LICENSED AS A
17 MORTGAGE LENDER UNDER SUBTITLE 5 OF THIS TITLE.18 (H) (I) "MORTGAGE LENDING BUSINESS" HAS THE MEANING STATED IN §
19 11-501 OF THIS TITLE.20 (I) (J) "MORTGAGE LOAN" HAS THE MEANING STATED IN § 11-501 OF THIS
21 TITLE.

22 (I) (K) (1) "MORTGAGE ORIGINATOR" MEANS AN INDIVIDUAL WHO:

23 (I) IS AN EMPLOYEE OF A MORTGAGE LENDER THAT:

24 (1) IS A MORTGAGE BROKER AS DEFINED IN § 11-501(I) OF
25 THIS TITLE; OR26 (2) HAS OR WILL HAVE A NET BRANCH OFFICE AT OR OUT OF
27 WHICH THE INDIVIDUAL WORKS OR WILL WORK; AND28 (II) DIRECTLY CONTACTS PROSPECTIVE BORROWERS FOR THE
29 PURPOSE OF NEGOTIATING WITH OR ADVISING THE PROSPECTIVE BORROWERS
30 REGARDING MORTGAGE LOAN TERMS AND AVAILABILITY;31 (III) RECEIVES FROM THE MORTGAGE LENDER COMPENSATION
32 THAT IS CALCULATED:

6 (IV) IS AUTHORIZED TO ACCEPT A LOAN APPLICATION ON
7 BEHALF OF THE MORTGAGE LENDER.

8 (2) "MORTGAGE ORIGINATOR" DOES NOT INCLUDE AN INDIVIDUAL WHO:

9 (I) OWNS A 25 PERCENT OR MORE INTEREST IN THE MORTGAGE
10 LENDER; OR

11 (II) IS LICENSED UNDER SUBTITLE 5 OF THIS TITLE, OR

12 (III) 4. IS AN EMPLOYEE, OR UNDER EXCLUSIVE CONTRACT WITH
13 AN AFFILIATE, OF A FEDERAL SAVINGS BANK OR FEDERAL SAVINGS ASSOCIATION
14 THAT MAINTAINS A BRANCH OFFICE IN THE STATE THAT ACCEPTS DEPOSITS; AND

18 (K) (L) (1) "NET BRANCH OFFICE" MEANS A BRANCH OFFICE OF A
19 MORTGAGE LENDER THAT IS SEPARATELY LICENSED UNDER SUBTITLE 5 OF THIS
20 TITLE IF:

21 (I) AS A CONDITION OF ESTABLISHING THE NET BRANCH, THE
22 MORTGAGE LENDER REQUIRES THE MORTGAGE ORIGINATOR WHO WORKS IN OR OUT
23 OF THE BRANCH OFFICE, OR A PERSON CONTROLLED BY THE MORTGAGE
24 ORIGINATOR, TO PAY AN APPLICATION, LICENSING, FRANCHISE, START-UP, OR
25 OTHER FEE TO THE MORTGAGE LENDER OR DIRECTLY TO THE COMMISSIONER;

26 (II) THE OVERHEAD EXPENSES OF THE NET BRANCH ARE PAID IN
27 WHOLE OR IN PART BY:

28 1. A MORTGAGE ORIGINATOR WHO WORKS IN OR OUT OF
29 THE BRANCH OFFICE; OR

32 (III) THE MORTGAGE LENDER IS NOT:

34 BRANCH LOCATION: OR

35 2. AN OWNER OF THE PREMISES OF THE BRANCH LOC

3 11-602.

4 (A) (1) THE LICENSING PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO
5 INDEPENDENT CONTRACTORS.

9 (B) THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT THIS
10 SUBTITLE.

11 11-603.

12 (A) A LICENSE ISSUED UNDER THIS SUBTITLE AUTHORIZES THE LICENSEE TO
13 ACT AS A MORTGAGE ORIGINATOR ONLY WHEN ACTING WITHIN THE SCOPE OF
14 EMPLOYMENT WITH A MORTGAGE LENDER.

15 (B) A LICENSEE MAY NOT:

16 (1) MAINTAIN MORE THAN ONE LICENSE UNDER THIS SUBTITLE; OR
17 (2) BE EMPLOYED BY MORE THAN ONE MORTGAGE LENDER.

18 (C) (1) THE COMMISSIONER SHALL INCLUDE ON EACH LICENSE:

19 (I) THE NAME OF THE LICENSEE; AND

20 (II) THE NAME OF THE LICENSEE'S EMPLOYER.

21 (2) UNLESS THE LICENSEE NOTIFIES THE COMMISSIONER IN WRITING
22 IN ADVANCE OF A CHANGE IN THE LICENSEE'S NAME OR THE LICENSEE'S EMPLOYER
23 AND PAYS TO THE COMMISSIONER A LICENSE AMENDMENT FEE OF \$75 FOR EACH
24 NOTICE PROVIDED UNDER THIS PARAGRAPH, AN INDIVIDUAL MAY NOT ACT AS A
25 MORTGAGE ORIGINATOR UNDER A NAME OR FOR AN EMPLOYER THAT IS DIFFERENT
26 FROM THE NAME AND EMPLOYER THAT APPEAR ON THE LICENSE.

27 (D) A LICENSE MAY BE ISSUED UNDER THIS SUBTITLE TO AN INDIVIDUAL
28 WHO IS EMPLOYED BY A MORTGAGE LENDER THE THAT HAS ITS PRINCIPAL OFFICE
29 OF WHICH IS LOCATED OUTSIDE THE STATE IF THE MORTGAGE LENDER MAINTAINS:

30 (1) A RESIDENT AGENT WITHIN THE STATE; AND

31 (2) AN OFFICE WITHIN THE STATE STAFFED BY AT LEAST ONE
32 EMPLOYEE AUTHORIZED TO ORIGINATE MORTGAGE LOANS.

33 (E) NOTWITHSTANDING PARAGRAPH (D)(2) OF THIS SECTION, A MORTGAGE
34 LENDER IS NOT REQUIRED TO MAINTAIN AN OFFICE IN THIS STATE IF THE LAWS OF

1 THE STATE IN WHICH ITS PRINCIPAL OFFICE IS LOCATED AUTHORIZE A MORTGAGE
2 LENDER FROM THIS STATE TO ENGAGE IN MORTGAGE LENDING WITHOUT
3 MAINTAINING AN OFFICE IN THAT STATE.

4 11-604.

5 BEGINNING ON JANUARY 1, 2007, AN INDIVIDUAL MAY NOT ACT AS A MORTGAGE
6 ORIGINATOR UNLESS THE INDIVIDUAL IS:

7 (1) A LICENSEE; OR

8 (2) EXEMPT FROM LICENSING UNDER THIS SUBTITLE OR SUBTITLE 5 OF
9 THIS TITLE.

10 11-605.

11 (A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL SATISFY THE
12 COMMISSIONER THAT:

13 (1) THE APPLICANT:

14 (I) HAS AT LEAST 3 YEARS OF EXPERIENCE IN THE MORTGAGE
15 LENDING BUSINESS AND HAS COMPLETED ~~THE~~ ANY REQUIRED COURSES FOR
16 CONTINUING EDUCATION ESTABLISHED BY THE COMMISSIONER ~~UNDER § 11-612 OF~~
17 ~~THIS SUBTITLE~~; OR

18 (II) HAS COMPLETED 40 HOURS OF CLASSROOM EDUCATION
19 ~~CONDUCTED IN THE STATE~~ AND ACHIEVED A PASSING GRADE ON A WRITTEN
20 EXAMINATION DEVELOPED AND ADMINISTERED BY THE PERSON CONDUCTING THE
21 CLASSROOM EDUCATION COURSE APPROVED BY THE COMMISSIONER FOR NEW
22 APPLICANTS; AND

23 (2) THE APPLICANT IS OF GOOD MORAL CHARACTER AND HAS GENERAL
24 FITNESS TO WARRANT THE BELIEF THAT THE APPLICANT WILL ACT AS A MORTGAGE
25 ORIGINATOR IN A LAWFUL, HONEST, FAIR, AND EFFICIENT MANNER.

26 (B) THE COMMISSIONER MAY DENY AN APPLICATION FOR A LICENSE FILED
27 BY AN INDIVIDUAL WHO HAS COMMITTED AN ACT THAT WOULD SERVE AS A
28 SUFFICIENT GROUND FOR SUSPENSION OR REVOCATION OF A LICENSE UNDER THIS
29 SUBTITLE OR A MORTGAGE LENDER LICENSE UNDER SUBTITLE 5 OF THIS TITLE.

30 (C) THE COMMISSIONER MAY NOT DENY AN APPLICATION BASED SOLELY ON
31 THE APPLICANT'S FINANCIAL CONDITION, CREDIT HISTORY, OR NET WORTH, OR THE
32 INVOLVEMENT OF THE APPLICANT IN A BANKRUPTCY PROCEEDING UNDER TITLE 11
33 OF THE UNITED STATES CODE.

1 11-606.

2 (A) (1) TO APPLY FOR A LICENSE, AN APPLICANT SHALL COMPLETE, SIGN,
3 AND SUBMIT TO THE COMMISSIONER AN APPLICATION MADE UNDER OATH ON THE
4 FORM THAT THE COMMISSIONER REQUIRES.

5 (2) THE APPLICANT SHALL COMPLY WITH ALL CONDITIONS AND
6 PROVISIONS OF THE APPLICATION FOR A LICENSE.

7 (3) THE APPLICATION SHALL INCLUDE:

8 (I) THE APPLICANT'S NAME, SOCIAL SECURITY NUMBER, BUSINESS
9 ADDRESS AND TELEPHONE NUMBER, RESIDENCE ADDRESS, RESIDENCE TELEPHONE
10 NUMBER, AND ELECTRONIC MAIL ADDRESS;

11 (II) THE BUSINESS NAME, BUSINESS ADDRESS, AND TELEPHONE
12 NUMBER OF THE APPLICANT'S EMPLOYER OR PROSPECTIVE EMPLOYER;

13 (III) THE APPLICANT'S RESUME OR WORK EXPERIENCE, INCLUDING
14 THE NAMES AND ADDRESSES OF PREVIOUS EMPLOYERS AND A DESCRIPTION OF
15 EACH JOB OR POSITION HELD BY THE APPLICANT WITH PREVIOUS EMPLOYERS;

16 (IV) A WRITTEN STATEMENT DISCLOSING BY THE APPLICANT'S
17 PRESENT OR PROSPECTIVE EMPLOYER THAT THE APPLICANT HAS BEEN APPROVED
18 FOR EMPLOYMENT AS A MORTGAGE ORIGINATOR;

19 (V) A WRITTEN STATEMENT DISCLOSING WHETHER THE
20 APPLICANT HAS BEEN CONVICTED OF, PLEADED GUILTY TO, OR PLEADED NOLO
21 CONTENDERE TO A FELONY OR MISDEMEANOR, EXCEPT MINOR TRAFFIC OFFENSES,
22 WITHIN THE PRECEDING 10 YEARS, A DESCRIPTION OF THE NATURE AND
23 DISPOSITION OF ANY DISCLOSED CRIMINAL PROCEEDING, AND THE NAME OF THE
24 COURT WHERE THE PROCEEDING TOOK PLACE; AND

25 (VI) A WRITTEN STATEMENT DISCLOSING WHETHER THE
26 COMMISSIONER, OR ANY OTHER REGULATORY AUTHORITY IN THE STATE OR ANY
27 OTHER JURISDICTION THAT GOVERNS THE MORTGAGE LENDING OR MORTGAGE
28 LOAN ORIGINATION BUSINESS, WITH RESPECT TO THE APPLICANT OR AN ENTITY IN
29 WHICH THE APPLICANT HAS OR HAD ANY OWNERSHIP INTEREST, HAS:

30 1. DENIED AN APPLICATION FOR A LICENSE;
31 2. REVOKED OR SUSPENDED A LICENSE; OR
32 3. IMPOSED ANY OTHER FORMAL ORDER OR REGULATOR
33 REGULATORY SANCTION.

34 (B) WITH EACH APPLICATION, THE APPLICANT SHALL PAY TO THE
35 COMMISSIONER:

36 (1) A NONREFUNDABLE APPLICATION INVESTIGATION FEE OF \$100; AND

1 (2) A LICENSE FEE OF \$300.

2 (C) (1) IN CONNECTION WITH AN APPLICATION FOR A LICENSE UNDER THIS
3 SECTION, AND AT ANY OTHER TIME THAT THE COMMISSIONER REQUESTS, AN
4 APPLICANT OR LICENSEE SHALL PROVIDE FINGERPRINTS FOR USE BY THE FEDERAL
5 BUREAU OF INVESTIGATION AND THE CRIMINAL JUSTICE INFORMATION SYSTEM
6 CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND
7 CORRECTIONAL SERVICES TO CONDUCT CRIMINAL HISTORY RECORDS CHECKS.

8 (2) AN APPLICANT OR LICENSEE REQUIRED TO PROVIDE FINGERPRINTS
9 UNDER THIS SUBSECTION SHALL PAY ANY PROCESSING OR OTHER FEES REQUIRED
10 BY THE FEDERAL BUREAU OF INVESTIGATION OR THE CRIMINAL JUSTICE
11 INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC
12 SAFETY AND CORRECTIONAL SERVICES.

13 11-607.

14 (A) WHEN AN APPLICANT FOR A LICENSE FILES THE APPLICATION AND PAYS
15 THE FEES REQUIRED BY § 11-606 OF THIS SUBTITLE, THE COMMISSIONER SHALL
16 CONDUCT AN INVESTIGATION TO DETERMINE IF THE APPLICANT MEETS THE
17 REQUIREMENTS OF § 11-605 OF THIS SUBTITLE.

18 (B) THE COMMISSIONER SHALL ISSUE A LICENSE TO AN APPLICANT WHO
19 MEETS THE REQUIREMENTS OF § 11-605 OF THIS SUBTITLE.

20 (C) IF THE COMMISSIONER HAS NOT NOTIFIED THE APPLICANT IN WRITING
21 THAT THE APPLICANT'S APPLICATION IS INCOMPLETE OR HAS BEEN DENIED ~~OR~~
22 ~~PROVISIONALLY DENIED~~ WITHIN 30 DAYS AFTER THE COMMISSIONER RECEIVES THE
23 COMPLETED APPLICATION, THE APPLICATION SHALL BE CONSIDERED
24 PROVISIONALLY APPROVED.

25 (D) IF THE COMMISSIONER NOTIFIES AN APPLICANT THAT THE APPLICATION
26 IS INCOMPLETE:

27 (1) THE COMMISSIONER'S NOTICE SHALL ITEMIZE THE STEPS WHICH
28 THE APPLICANT MUST TAKE TO COMPLETE THE APPLICATION; AND

29 (2) THE APPLICATION SHALL NOT BE CONSIDERED PROVISIONALLY
30 APPROVED UNTIL 30 DAYS AFTER THE APPLICANT SUPPLIES OR COMPLETES ALL
31 ITEMS AND STEPS IDENTIFIED IN THE COMMISSIONER'S NOTICE.

32 (E) WHETHER OR NOT AN APPLICATION HAS BEEN PROVISIONALLY
33 APPROVED, THE COMMISSIONER MAY DENY AN APPLICATION:

34 (1) IF THE APPLICANT FAILS TO QUALIFY FOR A LICENSE UNDER THIS
35 SUBTITLE; OR

36 (2) FOR ANY REASON THAT A LICENSE MAY BE REVOKED OR
37 SUSPENDED UNDER THIS SUBTITLE OR A MORTGAGE LENDER LICENSE MAY BE
38 SUSPENDED OR REVOKED UNDER § 11-517 OF THIS TITLE.

1 (F) THE COMMISSIONER SHALL APPROVE OR DENY AN APPLICATION WITHIN
2 60 DAYS AFTER THE COMMISSIONER RECEIVES A COMPLETED APPLICATION.

3 11-608.

4 (A) IF THE COMMISSIONER DENIES AN APPLICATION, THE COMMISSIONER:

5 (1) WITHIN 10 DAYS, SHALL NOTIFY THE APPLICANT, IN WRITING, OF
6 THE DENIAL;

7 (2) SHALL REFUND THE LICENSE FEE; AND

8 (3) SHALL KEEP THE INVESTIGATION FEE.

9 (B) WITHIN 30 DAYS AFTER THE COMMISSIONER DENIES AN APPLICATION,
10 THE COMMISSIONER SHALL:

11 (1) ISSUE A WRITTEN DECISION CONTAINING THE SPECIFIC FACTUAL
12 FINDINGS AND CONCLUSIONS OF LAW ON WHICH THE DENIAL WAS BASED;

13 (2) SEND A COPY OF THE WRITTEN DECISION BY CERTIFIED MAIL TO
14 THE APPLICANT; AND

15 (3) ADVISE THE APPLICANT BY CERTIFIED MAIL OF THE APPLICANT'S
16 RIGHT TO A HEARING TO BE HELD IN ACCORDANCE WITH THE ADMINISTRATIVE
17 PROCEDURE ACT.

18 (C) AN APPLICANT WHO SEEKS A HEARING ON AN APPLICATION DENIAL
19 SHALL FILE WITH THE COMMISSIONER'S OFFICE A WRITTEN REQUEST FOR A
20 HEARING WITHIN 45 DAYS AFTER RECEIPT OF THE COMMISSIONER'S WRITTEN
21 DECISION AND NOTICE OF THE APPLICANT'S RIGHT TO A HEARING.

22 11-609.

23 (A) A LICENSE ISSUED ON OR AFTER OCTOBER 1, 2006, EXPIRES ON DECEMBER
24 31 IN EACH ODD-NUMBERED YEAR AFTER DECEMBER 31, 2006, UNLESS THE LICENSE
25 IS RENEWED FOR A 2-YEAR TERM AS PROVIDED IN THIS SECTION.

26 (B) ON OR BEFORE DECEMBER 1 OF THE YEAR OF EXPIRATION, A LICENSE
27 MAY BE RENEWED FOR AN ADDITIONAL 2-YEAR TERM IF THE LICENSEE:

28 (1) OTHERWISE IS ENTITLED TO BE LICENSED;

29 (2) PAYS TO THE COMMISSIONER A RENEWAL FEE OF \$300; AND

30 (3) SUBMITS TO THE COMMISSIONER:

31 (I) A RENEWAL APPLICATION ON THE FORM THAT THE
32 COMMISSIONER REQUIRES; AND

1 (II) SATISFACTORY EVIDENCE OF COMPLIANCE WITH ANY
2 CONTINUING EDUCATION REQUIREMENTS SET BY REGULATIONS ADOPTED BY THE
3 COMMISSIONER.

4 (C) IF A LICENSE IS SURRENDERED VOLUNTARILY OR IS SUSPENDED OR
5 REVOKED, THE COMMISSIONER MAY NOT REFUND ANY PART OF THE LICENSE FEE
6 REGARDLESS OF THE TIME REMAINING IN THE LICENSE TERM.

7 (D) NOTWITHSTANDING SUBSECTIONS (A) AND (B) OF THIS SECTION, THE
8 COMMISSIONER MAY DETERMINE THAT A LICENSE LICENSES ISSUED UNDER THIS
9 SUBTITLE SHALL EXPIRE ON A STAGGERED BASIS.

10 11-610.

11 (A) THERE IS A MORTGAGE LENDER-ORIGINATOR FUND THAT CONSISTS OF:

12 (1) REVENUE RECEIVED FOR THE LICENSING OF INDIVIDUALS UNDER
13 THIS SUBTITLE;

14 (2) REVENUE RECEIVED FOR THE LICENSING OF ~~INDIVIDUALS~~ PERSONS
15 UNDER SUBTITLE 5 OF THIS TITLE;

16 (3) INCOME FROM THE INVESTMENTS THAT THE STATE TREASURER
17 MAKES FOR THE FUND; AND

18 (4) ANY OTHER FEE, EXAMINATION ASSESSMENT, OR REVENUE
19 RECEIVED BY THE COMMISSIONER UNDER SUBTITLE 5 OF THIS TITLE AND THIS
20 SUBTITLE.

21 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE
22 COMMISSIONER SHALL PAY ALL FINES AND PENALTIES COLLECTED BY THE
23 COMMISSIONER UNDER SUBTITLE 5 OF THIS TITLE AND THIS SUBTITLE INTO THE
24 GENERAL FUND OF THE STATE.

25 (C) THE PURPOSE OF THE FUND IS TO PAY THE COSTS AND EXPENSES
26 INCURRED BY THE COMMISSIONER THAT ARE RELATED TO THE REGULATION OF
27 MORTGAGE LENDING AND MORTGAGE ORIGINATION, INCLUDING:

28 (1) EXPENDITURES AUTHORIZED UNDER SUBTITLE 5 OF THIS TITLE OR
29 THIS SUBTITLE; AND

30 (2) ANY OTHER EXPENSE AUTHORIZED IN THE STATE BUDGET.

31 (D) (1) THE ANNUAL STATE BUDGET SHALL INCLUDE THE COSTS AND
32 EXPENSES OF THE COMMISSIONER RELATING TO THE REGULATION OF MORTGAGE
33 LENDING AND MORTGAGE ORIGINATION.

34 (2) ANY EXPENDITURES FROM THE FUND TO COVER COSTS AND
35 EXPENSES OF THE COMMISSIONER MAY BE MADE ONLY:

1 (I) WITH AN APPROPRIATION FROM THE FUND APPROVED BY THE
2 GENERAL ASSEMBLY IN THE ANNUAL STATE BUDGET; OR

3 (II) BY THE BUDGET AMENDMENT PROCEDURE PROVIDED FOR IN §
4 7-209 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

5 (3) IF, IN ANY FISCAL YEAR, THE AMOUNT OF THE REVENUE COLLECTED
6 BY THE COMMISSIONER AND DEPOSITED INTO THE FUND EXCEEDS THE ACTUAL
7 APPROPRIATION FOR THE COMMISSIONER TO REGULATE MORTGAGE LENDING
8 UNDER SUBTITLE 5 OF THIS TITLE AND MORTGAGE ORIGINATION UNDER THIS
9 SUBTITLE, THE EXCESS AMOUNT SHALL BE CARRIED FORWARD WITHIN THE FUND.

10 (E) (1) THE STATE TREASURER IS THE CUSTODIAN OF THE FUND.

11 (2) THE STATE TREASURER SHALL DEPOSIT PAYMENTS RECEIVED FROM
12 THE COMMISSIONER INTO THE FUND.

13 (F) (1) (I) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT
14 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

15 (II) THE FUND MAY NOT BE DEEMED A PART OF THE GENERAL
16 FUND OF THE STATE.

17 (2) UNLESS OTHERWISE PROVIDED BY LAW, NO PART OF THE FUND MAY
18 REVERT OR BE CREDITED TO:

19 (I) THE GENERAL FUND OF THE STATE; OR

20 (II) A ANY OTHER SPECIAL FUND OF THE STATE.

21 11-611.

22 (A) BEGINNING IN FISCAL YEAR 2006, THE GOVERNOR SHALL APPROPRIATE IN
23 THE ANNUAL STATE BUDGET FUNDS TO THE DIVISION OF FINANCIAL REGULATION
24 FOR THE PURPOSE OF CREATING NECESSARY POSITIONS TO IMPLEMENT THE
25 PROVISIONS OF THIS SUBTITLE.

26 (B) AN AMOUNT EQUAL TO THE GOVERNOR'S APPROPRIATION UNDER
27 SUBSECTION (A) OF THIS SECTION SHALL BE REPAYED BY THE FUND TO THE GENERAL
28 FUND OF THE STATE ON OR BEFORE JUNE 30, 2008.

29 11-612.

30 (A) THE COMMISSIONER SHALL ADOPT REGULATIONS THAT:

31 (1) SET CONTINUING EDUCATION REQUIREMENTS AS A CONDITION TO
32 THE RENEWAL OF A LICENSE UNDER THIS SUBTITLE; AND

33 (2) PRESCRIBE RULES FOR THE CLASSROOM EDUCATION REQUIREMENT
34 PROVIDED FOR IN § 11-605(A) OF THIS SUBTITLE.

1 (B) ANY CONTINUING EDUCATION REQUIREMENT ESTABLISHED BY THE
2 COMMISSIONER UNDER THIS SECTION SHALL APPLY TO THE FIRST RENEWAL OF A
3 LICENSE.

4 11-613.

5 (A) (1) ANY PERSON AGGRIEVED BY THE CONDUCT OF A LICENSEE UNDER
6 THIS SUBTITLE IN CONNECTION WITH A MORTGAGE LOAN MAY FILE A WRITTEN
7 COMPLAINT WITH THE COMMISSIONER WHO SHALL INVESTIGATE THE COMPLAINT.

8 (2) THE COMMISSIONER MAY MAKE ANY OTHER INVESTIGATION OF A
9 LICENSEE IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THAT THE
10 LICENSEE HAS VIOLATED ANY PROVISION OF THIS SUBTITLE, OF ANY REGULATION
11 ADOPTED UNDER THIS SUBTITLE, OR OF ANY OTHER LAW REGULATING MORTGAGE
12 LENDING OR MORTGAGE ORIGINATION IN THE STATE.

13 (B) A LICENSEE SHALL PAY TO THE COMMISSIONER A FEE OF NOT MORE
14 THAN \$250 PER DAY FOR EACH OF THE COMMISSIONER'S EMPLOYEES ENGAGED IN
15 ANY INVESTIGATION CONDUCTED UNDER THIS SECTION THAT RESULTS IN THE
16 DISCOVERY OF A VIOLATION OF THIS SUBTITLE BY THE LICENSEE.

17 (C) IN CONNECTION WITH AN INVESTIGATION MADE UNDER THIS SECTION,
18 THE COMMISSIONER MAY:

19 (1) EXAMINE THE BOOKS AND RECORDS OF A LICENSEE OR OF ANY
20 OTHER PERSON THAT THE COMMISSIONER BELIEVES HAS VIOLATED A PROVISION
21 OF THIS SUBTITLE, ANY RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE, OR
22 ANY OTHER LAW REGULATING MORTGAGE LENDING OR MORTGAGE ORIGINATION IN
23 THE STATE;

24 (2) SUBPOENA DOCUMENTS OR OTHER EVIDENCE; AND

25 (3) SUMMON AND EXAMINE UNDER OATH ANY PERSON WHOSE
26 TESTIMONY THE COMMISSIONER REQUIRES.

27 (D) (1) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA OR SUMMONS OF
28 THE COMMISSIONER UNDER THIS SUBTITLE OR TO TESTIFY CONCERNING ANY
29 MATTER ABOUT WHICH THE PERSON MAY BE INTERROGATED UNDER THIS
30 SUBTITLE, THE COMMISSIONER MAY FILE A PETITION FOR ENFORCEMENT WITH THE
31 CIRCUIT COURT FOR A COUNTY.

32 (2) ON PETITION BY THE COMMISSIONER, THE COURT MAY ORDER THE
33 PERSON TO ATTEND AND TESTIFY OR PRODUCE EVIDENCE.

34 11-614.

35 (A) IF THE COMMISSIONER FINDS THAT THE CONDUCT OF ANY OTHER
36 BUSINESS CONCEALS A VIOLATION OR EVASION OF THIS SUBTITLE OR ANY RULE OR
37 REGULATION ADOPTED UNDER THIS SUBTITLE, OR ANY LAW REGULATING
38 MORTGAGE LENDING OR MORTGAGE ORIGINATION IN THE STATE, THE

1 COMMISSIONER MAY ISSUE A WRITTEN ORDER TO A LICENSEE TO STOP DOING
2 BUSINESS:

3 (1) AT ANY PLACE IN WHICH THE OTHER BUSINESS IS CONDUCTED OR
4 SOLICITED; OR

5 (2) IN ASSOCIATION OR CONJUNCTION WITH THE OTHER BUSINESS.

6 (B) A LICENSEE WHO VIOLATES AN ORDER OF THE COMMISSIONER ISSUED
7 UNDER THIS SECTION SHALL BE SUBJECT TO THE PENALTIES PROVIDED BY § 11-615
8 OF THIS SUBTITLE.

9 (C) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR A
10 COUNTY SEEKING ENFORCEMENT OF AN ORDER UNDER THIS SECTION.

11 11-615.

12 (A) SUBJECT TO THE HEARING PROVISIONS OF § 11-616 OF THIS SUBTITLE,
13 THE COMMISSIONER MAY SUSPEND OR REVOKE THE LICENSE OF ANY LICENSEE IF
14 THE LICENSEE:

15 (1) MAKES ANY MATERIAL MISSTATEMENT IN AN APPLICATION FOR A
16 LICENSE;

17 (2) IS CONVICTED UNDER THE LAWS OF THE UNITED STATES OR OF ANY
18 STATE OF A FELONY OR A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE
19 FITNESS AND QUALIFICATION OF THE INDIVIDUAL TO ACT AS A MORTGAGE
20 ORIGINATOR;

21 (3) IN CONNECTION WITH ANY MORTGAGE LOAN OR LOAN APPLICATION
22 TRANSACTION:

23 (I) COMMITS ANY FRAUD;

24 (II) ENGAGES IN ANY ILLEGAL OR DISHONEST ACTIVITIES; OR

25 (III) MISREPRESENTS OR FAILS TO DISCLOSE ANY MATERIAL FACTS
26 TO A PERSON ENTITLED TO THAT INFORMATION;

27 (4) VIOLATES ANY PROVISION OF THIS SUBTITLE, ANY REGULATION
28 ADOPTED UNDER THIS SUBTITLE, OR ANY OTHER LAW REGULATING MORTGAGE
29 LENDING OR MORTGAGE ORIGINATION IN THE STATE; OR

30 (5) OTHERWISE DEMONSTRATES UNWORTHINESS, BAD FAITH,
31 DISHONESTY, OR ANY OTHER QUALITY THAT INDICATES THAT THE BUSINESS OF THE
32 LICENSEE HAS NOT BEEN OR WILL NOT BE CONDUCTED HONESTLY.

33 (B) IN DETERMINING WHETHER A LICENSE SHALL BE SUSPENDED OR
34 REVOKED FOR A REASON DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION, THE
35 COMMISSIONER SHALL CONSIDER:

1 (1) THE NATURE OF THE CRIME;

2 (2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES AUTHORIZED
3 BY THE LICENSE;

4 (3) WITH RESPECT TO A FELONY, THE RELEVANCE OF THE CONVICTION
5 TO THE FITNESS AND QUALIFICATION OF THE LICENSEE TO ENGAGE IN THE
6 MORTGAGE LENDING OR MORTGAGE ORIGINATION BUSINESS;

7 (4) THE LENGTH OF TIME SINCE THE CONVICTION; AND

8 (5) THE BEHAVIOR AND ACTIVITIES OF THE LICENSEE SINCE THE
9 CONVICTION.

10 (C) (1) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS
11 SUBTITLE, REGULATIONS ADOPTED UNDER THIS SUBTITLE, AND THE APPLICABLE
12 PROVISIONS OF TITLE 12 OF THE COMMERCIAL LAW ARTICLE BY:

13 (I) ISSUING AN ORDER:

14 1. TO CEASE AND DESIST FROM THE VIOLATION AND ANY
15 FURTHER SIMILAR VIOLATIONS; AND

16 2. REQUIRING THE VIOLATOR TO TAKE AFFIRMATIVE
17 ACTION TO CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR
18 PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION; AND

19 (II) IMPOSING A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH
20 VIOLATION.

21 (2) IF A VIOLATOR FAILS TO COMPLY WITH AN ORDER ISSUED UNDER
22 PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COMMISSIONER MAY IMPOSE A CIVIL
23 PENALTY NOT EXCEEDING \$1,000 FOR EACH VIOLATION FROM WHICH THE VIOLATOR
24 FAILED TO CEASE AND DESIST OR FOR WHICH THE VIOLATOR FAILED TO TAKE
25 AFFIRMATIVE ACTION TO CORRECT.

26 (D) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR A
27 COUNTY SEEKING ENFORCEMENT OF AN ORDER ISSUED UNDER THIS SECTION.

28 (E) IN DETERMINING THE AMOUNT OF A CIVIL PENALTY IMPOSED UNDER
29 SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER:

30 (1) THE SERIOUSNESS OF THE VIOLATION;

31 (2) THE GOOD FAITH OF THE VIOLATOR;

32 (3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;

33 (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC AND
34 MORTGAGE INDUSTRY;

(5) THE ASSETS OF THE VIOLATOR; AND

2 (6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE
3 CIVIL PENALTY.

4 11-616.

5 (A) BEFORE THE COMMISSIONER TAKES ANY ACTION UNDER § 11-614 OR §
6 11-615 OF THIS SUBTITLE, THE COMMISSIONER SHALL GIVE THE LICENSEE AN
7 OPPORTUNITY FOR A HEARING.

8 (B) NOTICE OF THE HEARING SHALL BE GIVEN AND THE HEARING SHALL BE
9 HELD IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

10 (C) THE HEARING NOTICE TO THE LICENSEE SHALL BE SENT BY CERTIFIED
11 MAIL, RETURN RECEIPT REQUESTED, TO THE PRINCIPAL PLACE OF BUSINESS OF THE
12 LICENSEE AT LEAST 30 DAYS BEFORE THE HEARING.

13 11-617.

14 ANY PERSON WHO WILLFULLY VIOLATES THE PROVISIONS OF THIS SUBTITLE
15 IS GUILTY OF A FELONY AND, ON CONVICTION, IS SUBJECT TO A FINE NOT
16 EXCEEDING \$25,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

17 11-618.

18 THE EMPLOYMENT OF A MORTGAGE ORIGINATOR LICENSED UNDER THIS
19 SUBTITLE BY A MORTGAGE LENDER DOES NOT RELIEVE THE MORTGAGE LENDER OF
20 A RESPONSIBILITY UNDER THIS SUBTITLE OR UNDER SUBTITLE 5 OF THIS TITLE, A
21 RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE OR UNDER SUBTITLE 5 OF
22 THIS TITLE, OR A LAW GOVERNING MORTGAGE LENDING IN THE STATE.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2005.