WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4285

(By Delegates Moore, Walters, Reynolds and Azinger)

Passed March 12, 2010

In Effect Ninety Days From Passage
AN ACT to amend and reenact §31-17-4 of the Code of West Virginia, 1931, as amended, and to amend and reenact §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-6, §31-17A-9, §31-17A-12 and §31-17A-13 of said code, all relating to the licensing of residential mortgage brokers, lenders and loan originators by the Division of Banking; definitions; allowing the Commissioner of Banking to reduce or waive application fees, bond amounts and net worth requirements of bona-fide nonprofit business entities, including community housing development organizations; providing that mortgage loan originators may be employed by or under contract with only one mortgage broker or lender at any time; allowing the commissioner to reduce or waive the application fees for mortgage loan originators employed by bona fide nonprofit organizations or other community housing development organizations; providing that a mortgage loan originator license may not be transferred or assigned and that a mortgage loan originator changing employers must provide thirty days prior notice to the commissioner and pay a fee of $50; increasing the
amount of prelicensing education required for loan originators from twenty to twenty-two hours; providing that prelicensing education courses and requirements and continuing education courses for mortgage loan originators may be approved by the division of banking; providing a procedure for the commissioner to follow whenever taking an enforcement action under article seventeen-a of this code; allowing any person not licensed as a mortgage lender or broker under article seventeen of chapter thirty-one of this code or article four of chapter forty-six-a of this code to register with the Nationwide Mortgage Licensing System and Registry and provide a surety bond in the appropriate amount for any mortgage loan originators it employs; and allowing the commissioner to reduce or waive the bond amounts imposed by article seventeen-a for mortgage loan originators employed by bona fide nonprofit corporations or other bona fide nonprofit business entities, including community housing development organizations, if the commissioner determines that such action would not violate any applicable law.

Be it enacted by the Legislature of West Virginia:

That §31-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-6, §31-17A-9, §31-17A-12 and §31-17A-13, of said code be amended and reenacted, all to read as follows:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

(a) In connection with an application for licensing as a mortgage lender or mortgage broker, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing
System and Registry information concerning the applicant’s identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) In order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this article, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(c) In order to reduce the points of contact which the commissioner may have to maintain, for purposes of this article, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.
(d) Application for a lender's or broker's license shall each year be submitted under oath, in the form prescribed by the commissioner, and shall contain the full name and address of the applicant and, if the applicant is a partnership, limited liability company or association, of every member thereof, and, if a corporation, of each officer, director and owner of ten percent or more of the capital stock thereof and further information as the commissioner may reasonably require. Background and credit checks shall be conducted in accordance with this section for any officer, director or owner, directly or indirectly, of ten percent or more of the capital stock of a corporation or any member of a limited liability or partnership with, directly or indirectly, a ten percent or greater ownership interest. Any application shall also disclose the location at which the business of lender or broker is to be conducted.

(e) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least $250,000;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of $100,000 for licensees with West Virginia annual loan originations of $0 to $3 million, $150,000 for West Virginia annual loan originations greater than $3 million and up to $10 million, and $250,000 for West Virginia annual loan originations over
$10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state: Provided, That lender licensees who service West Virginia mortgage loans shall file with the commissioner a bond under the same conditions listed above in the amount of $200,000;

(4) Pay to the commissioner a license fee of $1,250 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Mortgage Licensing System and Registry. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the investigation. An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(f) At the time of making application for a broker's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least $10,000;
(3) File with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of $50,000 for licensees with West Virginia loan originations of $0 to $3 million, $75,000 for West Virginia loan originations greater than $3 million and up to $10 million, and $100,000 for West Virginia loan originations over $10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state: Provided, That the bond must be in the amount of $150,000 before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of $350 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Mortgage Licensing System and Registry; and

(5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(g) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of the bond.

(h) Nonresident lenders and brokers licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.
(i) The commissioner may elect to reduce or waive the application fees, bond amounts and net worth requirements imposed by this section for bona fide nonprofit corporations or other bona fide nonprofit business entities, including community housing development organizations, whose residential mortgage lending or brokering activities provide housing primarily to households or persons below the HUD-established median income for their area of residence. Any waiver of fees or other costs under this paragraph shall not be construed as a waiver of the duty to comply with all other provisions of this article.

(j) Every broker and lender licensee shall pay a fee of $5 for each residential mortgage loan originated, made or brokered in a calendar year. This fee shall be paid annually for the benefit of the Division of Banking and remitted with the report required pursuant to subsection (b), section eleven of this article for loans made, brokered or originated during the previous calendar year. If a licensee ceases operation, it shall remit any fees due since the last reporting period when it relinquishes its license.

(k) If a claim for a consumer restitution is pending on a bond required pursuant to this section when the commissioner makes a claim for a civil administrative penalty or an unpaid examination invoice, the consumer claim shall be resolved before any payments may be made for an unpaid penalty or examination invoice.

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-2. Definitions.

As used in this article:
(a) “Commissioner” means the Commissioner of Banking of this state;

(b) “Depository institution” has the same meaning as in section three of the Federal Deposit Insurance Act and includes any federally insured credit union; and,

(c) “Division” means the West Virginia Division of Banking;

d) “Federal banking agencies” means the board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration and the Federal Deposit Insurance Corporation;

(e) “Immediate family member” means a spouse, child, sibling, parent, grandparent or grandchild. This includes stepparents, stepchildren, stepsiblings and adoptive relationships;

(f) “Individual” means a natural person; and,

(g) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under article seventeen of this chapter.

(1) For purposes of this paragraph, “clerical or support duties” may include subsequent to the receipt of an application:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and,
(B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; or

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(h) “Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan and is sponsored by a mortgage lender, broker or regulated consumer lender licensed by the Division of Banking.

“Mortgage loan originator” does not include:

(1) An individual engaged solely as a loan processor or underwriter except as otherwise provided in section three of this article;

(2) A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with West Virginia law, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator;
(3) A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code; or

(4) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the sales transaction;

(i) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(1) Acting as a real estate salesperson or real estate broker for a buyer, seller, lessor or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property other than in connection with providing financing with respect to any such transaction;

(4) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in subsection (1), (2), (3) or (4) of this section;

(j) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and
the American Association of Residential Mortgage Regulators
for the licensing and registration of mortgage brokers and
lenders licensed pursuant to article seventeen of this chapter
and mortgage loan originators licensed pursuant to this
article;

(k) "Nontraditional mortgage product" means any
mortgage product other than a fixed rate mortgage;

(l) "Person" means a natural person, corporation, company,
limited liability company, partnership or association;

(m) "Registered mortgage loan originator" means any
individual who:

(1) Meets the definition of mortgage loan originator and
is an employee of:

(A) A depository institution;

(B) A subsidiary that is:

(i) Owned and controlled by a depository institution; and

(ii) Regulated by a federal banking agency; or

(C) An institution regulated by the Farm Credit
Administration; and

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

(n) "Residential mortgage loan" means any loan
primarily for personal, family or household use that is
secured by a mortgage, deed of trust or other equivalent
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consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling;

(o) "Residential real estate" means any real property located in West Virginia, upon which is constructed or intended to be constructed a dwelling; and

(p) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

§31-17A-3. License and registration required.

(a) An individual, unless specifically exempted under subsection (c) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this article. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. A Mortgage loan originator licensed under this article may be employed by, or under contract to provide mortgage loan originator services for, only one entity licensed or exempt from licensing under article seventeen of this chapter at any time.

(b) To facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (a) of this section:

(1) For all individuals other than individuals described in subdivision (2) of this subsection shall be January 31, 2010; and
(2) For all individuals licensed as mortgage loan originators before July 1, 2009, shall be January 1, 2011.

(c) The following are exempt from this article:

(1) Registered Mortgage Loan Originators, when acting for an entity described in subdivision (11), section two of this article;

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

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

(4) A licensed attorney who negotiates the terms of a residential 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 lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator.

(d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection (a) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) To implement an orderly and efficient licensing and transition process, the commissioner may establish interim
policies and procedures for licensing and acceptance of applications as follows:

(1) Mortgage loan originators employed by or under exclusive contract to licensed mortgage brokers after the effective date of this article shall submit an application on a form prescribed by the commissioner, including all necessary information, fees and authorizations for investigation as the commissioner may determine necessary, and must meet the standards for licensure set forth in this article. Any license issued under this subdivision and any license current as of the effective date of this article will expire on December 31, 2010: Provided, That notwithstanding the licensing requirements under this section, an individual acting exclusively as an employee of a servicer who is engaging in loss mitigation efforts with respect to an existing mortgage transaction serviced by his or her employer is not required to meet the education, testing, background and licensing standards of this article until July 1, 2011, to the extent that this extension of time is not denied by guideline, rule, regulation or interpretive letter issued by the United States Department of Housing and Urban Development. In the event this extension of time is denied, such individuals shall apply for a license under this section within ninety days of the denial; and

(2) Mortgage loan originators employed by or under exclusive contract to licensed mortgage lenders and regulated consumer lenders shall comply with this article and submit all applications through the Nationwide Mortgage Licensing System and Registry on or before January 31, 2010.

§31-17A-4. State license application and issuance.

(a) Applicants for a license must apply in a form as prescribed by the commissioner. Each form shall contain
content as set forth by instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this article. The application must be submitted with an application fee of $50 plus the actual cost of fingerprint processing, together with any processing fee assessed by the Nationwide Mortgage Licensing System and Registry. The commissioner may elect to reduce or waive the application fees for mortgage loan originators employed by bona fide nonprofit organizations or other community housing development organizations that serve the housing needs of households or persons below the HUD-established median income for their area of residence. Any waiver of fees or other costs under this paragraph shall not be construed as a waiver of the duty to comply with all other provisions of this article.

(b) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

(c) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and
(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the commissioner, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(d) To reduce the points of contact which the Federal Bureau of Investigation may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(e) To reduce the points of contact which the commissioner may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(f) Nonresident mortgage loan originators licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.
(g) The Commissioner may grant a provisional license to a mortgage loan originator who has met all other requirements for licensing under this article but: (1) has not passed a test regarding West Virginia mortgage laws and regulations required for licensure: Provided, That the provisionally licensed mortgage loan originator takes and passes that test within sixty days of the test becoming available; or (2) for whom the Commissioner has not received the results of a criminal background check despite the good faith effort of the applicant to provide in a timely manner the information necessary to obtain a criminal background check.

§31-17 A-6. Prelicensing and relicensing education of loan originators.

(a) To meet the prelicensing education requirement, a person must complete at least twenty-two hours of education approved in accordance with subsection (b) of this section, which shall include at least:

1. (1) Three hours of federal law and regulations;

2. (2) Three hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

3. (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

4. (4) Two hours of training related to West Virginia mortgage and consumer laws or issues.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry or the Division based upon reasonable standards.
Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry or the Division, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry or the Division in subdivisions (1), (2) and (3) subsection (a) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in West Virginia.

(f) A person previously licensed under this article subsequent to July 1, 2009, applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.


(a) To meet the annual continuing education requirements, a licensed mortgage loan originator must complete at least eight hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;
(2) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) One hour of West Virginia law or regulations.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry or the Division based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section precludes any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) Except for subsection (b), section eight of this article and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1), (2) and (3), subsection (a) of this section for any state shall be accepted as credit towards completion of continuing education requirements in West Virginia.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the renewal requirements of subsections (a)(1) and (3) of section eight may make up any deficiency in continuing education as established by the commissioner.

§31-17A-12. Enforcement authorities, violations and penalties.

(a) To ensure the effective supervision and enforcement of this article, the commissioner may:

(1) Deny, suspend, revoke, condition or decline to renew a license issued under this article for a violation of this article or rules or order or directive entered under this article;

(2) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section five or eight of this article, or
withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) Order restitution against persons subject to this article for violations of this article;

(4) Impose civil administrative penalties on persons subject to this article pursuant to subsections (b), (c) and (d) of this section; and

(5) Issue orders or directives under this article as follows:

(A) Order or direct persons subject to this article to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(B) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to cease and desist;

(C) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under section three if the commissioner determines that such license was erroneously issued or the licensee is currently in violation of this article; and

(D) Order or direct such other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil administrative penalty on a mortgage loan originator or person subject to this article if the commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this article has violated or failed to comply with any requirement of this article or any rule prescribed by the commissioner under this article or order issued under authority of this article.
(c) The maximum amount of penalty for each act or omission described in subsection (b) of this section shall be $25,000.

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

(e) If the commissioner takes any enforcement action under this article, he or she shall enter an order to that effect and shall cause a copy of that order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee. The commissioner shall also submit a copy of the order for publication in the Nationwide Mortgage Licensing System and Registry when that functionality of the system becomes available. An applicant or licensee adversely affected by an order may request an appeal and shall be provided a hearing as provided in section fourteen, article seventeen of this chapter.


(a) Each mortgage loan originator must be covered by a surety bond in accordance with this section in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or unpaid examination invoice. If the mortgage loan originator is an employee or exclusive agent of a person subject to this article, article seventeen of this chapter, or article four, chapter forty-six-a of this code, the surety bond of that person may be used in lieu of the mortgage loan originator’s individual surety bond requirement. Any person not subject to licensing as a mortgage lender or broker under article seventeen, chapter thirty-one of this code or article four, chapter forty-six-a of this code that employs a mortgage loan
originator licensed under this article may elect to register
with the Nationwide Mortgage Licensing System and
Registry and provide a surety bond in the appropriate amount
for the mortgage loan originator employed.

(1) The surety bond must provide coverage for each
mortgage loan originator in an amount as prescribed in
subsection (b) of this section.

(2) The surety bond shall be in a form as prescribed by
the commissioner.

(3) The commissioner may promulgate rules with respect
to the requirements for such surety bonds as are necessary to
accomplish the purposes of this article.

(b) The penal sum of the surety bond shall be maintained
in an amount as required by article seventeen of this chapter
for licensed mortgage lenders and brokers or article four,
chapter forty-six-a of this code for regulated consumer
lenders.

(c) When an action is commenced on a licensee’s bond or
any bond covering the activities of a licensee under this
article, the commissioner may require the filing of a new
bond.

(d) Immediately upon recovery upon any action on a
bond covering any licensee under this article, a new bond
shall be filed.

(e) The commissioner may elect to reduce or waive the
bond amounts imposed by this section for mortgage loan
originators employed by bona fide nonprofit corporations or
other bona fide nonprofit business entities, including
community housing development organizations, or any
agency or instrumentality of this state, federal, county or municipal government whose residential mortgage lending or brokering activities provide housing primarily to households or persons below the HUD-established median income for their area of residence if the commissioner determines that a reduction or waiver would not violate any applicable law. Any waiver of fees or other costs under this paragraph shall not be construed as a waiver of the duty to comply with all other provisions of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill approved this the 1st day of April, 2010.

Governor
PRESENTED TO THE
GOVERNOR
MAR 2 & 6 2010
Time _140_