

AN ACT

To amend sections 1109.22, 1304.55, 1321.52, and 1322.02 and to enact sections 1321.537, 1321.538, 1322.042, and 1322.043 of the Revised Code to authorize the Superintendent of Financial Institutions to issue a temporary mortgage loan originator license or temporary loan originator license to an out-of-state applicant who meets certain criteria, to make changes regarding derivative transactions by banks, and to make changes to the Uniform Commercial Funds Transfers law regarding remittance transfers.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1109.22, 1304.55, 1321.52, and 1322.02 be amended and sections 1321.537, 1321.538, 1322.042, and 1322.043 of the Revised Code be enacted to read as follows:

Sec. 1109.22. (A) As used in this section:

(1) "Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(2) "Loans and extensions of credit" shall include all of the following:

(a) All direct or indirect advances of funds made on the basis of any obligation of a person to repay the funds or repayable from specific property pledged by or on behalf of the person ~~and, to,~~

(b) To the extent specified by the superintendent of financial institutions, ~~also include~~ any liability of a bank to advance funds to or on behalf of a person pursuant to a contractual commitment;

(c) Any credit exposure to a person arising from a derivative transaction between the person and a bank.

~~(2)~~(3) "Person" includes an individual; sole proprietorship; partnership;

joint venture; association; trust; estate; business trust; corporation; government; agency, instrumentality, or political subdivision of a government; limited liability company; or any similar entity or organization.

(B) Except as provided in divisions (C), (D), (E), and (F) of this section:

(1) The total loans and extensions of credit by a bank to a person outstanding at any one time and not fully secured, as determined in a manner consistent with division (B)(2) of this section, by collateral having a market value at least equal to the amount of the loans and extensions of credit to that person that are outstanding shall not exceed fifteen per cent of the unimpaired capital of the bank.

(2) The total loans and extensions of credit by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loans and extensions of credit to that person outstanding shall not exceed ten per cent of the unimpaired capital of the bank.

(3) The limitation set forth in division (B)(2) of this section is separate from and in addition to the limitation set forth in division (B)(1) of this section.

(C) No limitation based on capital applies to loans and extensions of credit by a bank to a person that are any of the following types:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse;

(2) The purchase of bankers' acceptances of the kinds described in division (B) or (C) of section 1109.17 of the Revised Code and issued by other banks;

(3) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, treasury bills of the United States, or other obligations fully guaranteed as to principal and interest by the United States;

(4) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned, directly or indirectly, by the United States;

(5) Loans or extensions of credit secured by a segregated deposit account in the lending bank;

(6) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of financial institutions, or other agent in charge of the business and property of a financial institution, when the loans or extensions of credit are approved by the superintendent of financial

institutions of this state;

(7) Loans or extensions of credit to the student loan marketing association.

(D) A bank may make loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples subject to the general limitations of division (B) of this section, and may make additional loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples, if all of the following apply:

(1) The market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen per cent of the outstanding amount of the loan or extension of credit.

(2) The staples are fully covered by insurance whenever it is customary to insure staples of that kind.

(3) The total amount of the bank's additional loans and extensions of credit outstanding to one person at any time does not exceed thirty-five per cent of the bank's capital.

(E) Subject to divisions (E)(1) and (2) of this section, a bank may make loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper.

(1) If the paper carries a full recourse endorsement or unconditional guarantee by the person transferring the paper, the total amount of the installment consumer paper transferred by one person a bank may hold at one time shall not exceed twenty-five per cent of the bank's capital, and the collateral requirements of division (B)(2) of this section do not apply.

(2) The limitations set forth in division (B) of this section apply only to the loans and extensions of credit of each maker of negotiable or nonnegotiable installment consumer paper, and not to obligations arising from any full or partial recourse endorsement or guarantee by the transferor discounting the consumer paper to the bank, if both of the following apply:

(a) The bank's files are, or the knowledge of its officers of the financial condition of each maker of the consumer paper is, reasonably adequate.

(b) An officer of the bank designated for that purpose by the bank's board of directors certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor.

(F) Without regard to the collateral requirements of division (B) of this section, a bank may have loans and extensions of credit to one person

outstanding at one time not exceeding twenty-five per cent of the bank's capital of the following types:

(1) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen per cent of the face amount of the note covered;

(2) Loans and extensions of credit that arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, if the paper carries a full recourse endorsement or unconditional guarantee of the seller, and the loans and extensions of credit are secured by the cattle being sold.

(G)(1) The superintendent may adopt rules to administer and carry out the purposes of this section, including ~~rules~~, but not limited to, the following:

(a) Rules defining or further defining terms used in this section, and rules including expanding or limiting the definition of "person" defined in division (A) of this section;

(b) Rules establishing limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit;

(c) Rules relating to credit exposure arising from derivative transactions.

(2) The superintendent may determine when a loan putatively made to a person is, for purposes of this section, to be attributed to another person.

Sec. 1304.55. ~~Sections~~ (A) Except as otherwise provided in division (B) of this section, sections 1304.51 to 1304.85 of the Revised Code do not apply to a funds transfer any part of which is governed by the "Electronic Fund Transfer Act," 92 Stat. 3728 (1978), 15 U.S.C.A. 1693, as amended.

(B) Sections 1304.51 to 1304.85 of the Revised Code apply to a remittance transfer as defined in the "Electronic Fund Transfer Act," 124 Stat. 2065 (2010), 15 U.S.C. 1693o-1, as amended, unless the remittance transfer is an electronic fund transfer as defined in the "Electronic Fund Transfer Act," 92 Stat. 3728 (1978), 15 U.S.C. 1693a, as amended.

(C) In a funds transfer to which sections 1304.51 to 1304.85 of the Revised Code apply, in the event of an inconsistency between an applicable provision of sections 1304.51 to 1304.85 of the Revised Code and an applicable provision of the "Electronic Fund Transfer Act," 92 Stat. 3728 (1978), 15 U.S.C. 1693, as amended, the provisions of the Electronic Fund Transfer Act govern to the extent of the inconsistency.

Sec. 1321.52. (A)(1) No person, on that person's own behalf or on behalf of any other person, shall do any of the following without having first

obtained a certificate of registration from the division of financial institutions:

(a) Advertise, solicit, or hold out that the person is engaged in the business of making residential mortgage loans secured by a mortgage on a borrower's real estate which is other than a first lien on the real estate;

(b) Engage in the business of lending or collecting the person's own or another person's money, credit, or choses in action for non-first lien residential mortgage loans;

(c) Employ or compensate mortgage loan originators licensed or who should be licensed under sections 1321.51 to 1321.60 of the Revised Code to conduct the business of making residential mortgage loans;

(d) Make loans in this state of the type set forth in division (C) of this section that are unsecured or are secured by other than real property, which loans are for more than five thousand dollars at a rate of interest greater than permitted by section 1343.01 or other specific provisions of the Revised Code.

(2) Each person issued a certificate of registration or license is subject to all the rules prescribed under sections 1321.51 to 1321.60 of the Revised Code.

(B)(1) All loans made to persons who at the time are residents of this state are considered as made within this state and subject to the laws of this state, regardless of any statement in the contract or note to the contrary, except as follows:

(a) If the loan is primarily secured by a lien on real property in another state and is arranged by a mortgage loan originator licensed by that state, the borrower may by choice of law designate that the transaction be governed by the law where the real property is located if the other state has consumer protection laws covering the borrower that are applicable to the transaction.

(b) If the loan is for the purpose of purchasing goods acquired by the borrower when the borrower is outside of this state, the loan may be governed by the laws of the other state.

(2) Nothing in division (B)(1) of this section prevents a choice of law or requires registration or licensure of persons outside of this state in a transaction involving the solicitation of residents of this state to obtain non-real estate secured loans that require the borrowers to physically visit a lender's out-of-state office to apply for and obtain the disbursement of loan funds.

(C) A registrant may make unsecured loans, loans secured by a mortgage on a borrower's real estate which is a first lien or other than a first lien on the real estate, loans secured by other than real estate, and loans

secured by any combination of mortgages and security interests, on terms and conditions provided by sections 1321.51 to 1321.60 of the Revised Code.

(D)(1) If a lender that is subject to sections 1321.51 to 1321.60 of the Revised Code makes a loan in violation of division (A)(1) of this section, the lender has no right to collect, receive, or retain any interest or charges on that loan.

(2) If a registrant applies to the division for a renewal of the registrant's certificate after the date required by division (A)(7) of section 1321.53 of the Revised Code, but prior to the first day of February of that year, and the division approves the application, division (D)(1) of this section does not apply with respect to any loan made by the registrant while the registrant's certificate was expired.

(3) If a person's registration under sections 1321.51 to 1321.60 of the Revised Code terminates due to nonrenewal or otherwise but the person continues to engage in the business of collecting or servicing non-first lien residential mortgage loans in violation of division (A)(1) of this section, the superintendent of financial institutions may take administrative action, including action on any subsequent application for a certificate of registration. In addition, no late fee, bad check charge except as incurred, charge related to default or cost to realize on its security interest, or prepayment penalty on non-first lien residential mortgage loans shall be collected or retained by a person who is in violation of division (A)(1)(b) of this section for the period of time in which the person was in violation. Nothing in division (D)(3) of this section prevents or otherwise precludes any other actions or penalties provided by law or modifies a defense of holder in due course that a subsequent purchaser servicing the residential mortgage loan may raise.

(E)(1) No individual shall engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license pursuant to section 1321.532 of the Revised Code from the division of financial institutions. A mortgage loan originator shall be employed or associated with a registrant or entity exempt from registration under sections 1321.51 to 1321.60 of the Revised Code, but shall not be employed by or associated with more than one registrant or exempt entity at any one time.

(2) An individual acting under the individual's authority as a registered mortgage loan originator shall not be required to be licensed under division (E)(1) of this section.

(3) An individual who holds a valid temporary mortgage loan originator license issued pursuant to section 1321.537 of the Revised Code may

engage in the business of a mortgage loan originator in accordance with sections 1321.51 to 1321.60 of the Revised Code during the term of the temporary license.

(F)(1) Each licensee shall register with, and maintain a valid unique identifier issued by, the nationwide mortgage licensing system and registry.

(2) No person shall use a licensee's unique identifier for any purpose other than as set forth in the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101.

(G)(1) If a person that is subject to sections 1321.51 to 1321.60 of the Revised Code makes a loan in violation of division (A)(1)(d) of this section and subsequently sells or assigns that loan, the person is liable to the borrower for any interest paid on that loan to the holder or assignee in excess of the rate that would be applicable in the absence of sections 1321.51 to 1321.60 of the Revised Code, in addition to any interest or charges paid on that loan to the unauthorized lender as provided by division (D)(1) of this section.

(2) If a person that is subject to sections 1321.51 to 1321.60 of the Revised Code makes a residential mortgage loan in violation of division (A)(1)(b) or (c) of this section and subsequently sells or assigns that loan, the lender is liable to the borrower for any interest paid on that loan to the holder or assignee in excess of the rate set forth in division (B)(4) of section 1343.01 of the Revised Code, in addition to any interest or charges paid on that loan to the unauthorized lender as provided by division (D)(1) of this section.

Sec. 1321.537. (A) As used in this section:

(1) "Out-of-state mortgage loan originator" means an individual to whom both of the following apply:

(a) The individual holds a valid mortgage loan originator license, or comparable authority, issued pursuant to the law of any other state of the United States.

(b) The individual is registered, fingerprinted, and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(2) "Sponsor" means a registrant or entity described in division (D) of section 1321.53 of the Revised Code that employs or is associated with an applicant for a temporary mortgage loan originator license and, during the term of the applicant's temporary license, covers the applicant under its corporate surety bond or requires the applicant to obtain and maintain a corporate surety bond.

(B) The superintendent of financial institutions may, in accordance with this section, issue to an out-of-state mortgage loan originator a temporary

mortgage loan originator license that enables the licensee to engage in the business of a mortgage loan originator while the individual completes the requirements necessary to meet the conditions set forth in section 1321.532 of the Revised Code for a mortgage loan originator license. A temporary mortgage loan originator license shall be valid for a term of not more than one hundred twenty days from the date of issuance. A temporary mortgage loan originator license may not be renewed.

(C) An application for a temporary mortgage loan originator license shall be in writing, under oath, and in a form that meets the requirements of the nationwide mortgage licensing system and registry. The application shall be accompanied by a nonrefundable application fee, the amount of which shall be determined by the superintendent in rule, and a certification that, as of the date of application, the applicant meets the following conditions:

(1) The applicant has at least two years of experience in the field of residential mortgage lending in the five years immediately preceding the date of application for the temporary mortgage loan originator license.

(2) The applicant has not previously applied for a temporary mortgage loan originator license in this state.

(3) The applicant has not had a mortgage loan originator license, or comparable authority, revoked in any governmental jurisdiction. For purposes of division (C)(3) of this section, a subsequent formal vacation of such a revocation shall not be considered a revocation.

(4) The applicant has not been convicted of, or pleaded guilty or nolo contendere to, any of the following in a domestic, foreign, or military court:

(a) During the seven-year period immediately preceding the date of application, a misdemeanor involving theft or any felony;

(b) At any time prior to the date of application, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.

For purposes of division (C)(4) of this section, any conviction for which the applicant has received a pardon shall not be considered a conviction.

(D) The superintendent shall issue a temporary mortgage loan originator license to the applicant if the superintendent finds that all of the following conditions are met:

(1) The application is accompanied by the application fee and the certification described in division (C) of this section.

(2) The applicant is registered, fingerprinted, and has a valid unique identifier through the nationwide mortgage licensing system and registry as of the date of application.

(3) The applicant has authorized the nationwide mortgage licensing system and registry to obtain a credit report for submission to the

superintendent.

(4) The applicant has a sponsor that certifies employment of, or association with, the applicant and has signed the application.

(E) The sponsor of a temporary licensee shall have an affirmative duty to supervise the conduct of each temporary mortgage loan originator in the same manner as is required of its other licensees. If the temporary licensee's employment or association with the sponsor is terminated, the sponsor shall notify the division of financial institutions of the termination through the nationwide mortgage licensing system and registry. Upon the division's receipt of the notice, the sponsor shall no longer be held responsible for the conduct of the temporary licensee.

(F) The superintendent may, in accordance with Chapter 119. of the Revised Code, adopt rules necessary for the implementation and operation of this section.

Sec. 1321.538. If the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101, as amended, is modified after the effective date of this section, or any regulation, statement, or position is adopted under that act, to permit states to issue a temporary mortgage loan originator license to a registered mortgage loan originator, the superintendent shall, in accordance with section 111.15 of the Revised Code, adopt rules the superintendent considers necessary and appropriate to issue a temporary license to a registered mortgage loan originator.

Sec. 1322.02. (A)(1) No person, on the person's own behalf or on behalf of any other person, shall act as a mortgage broker without first having obtained a certificate of registration from the superintendent of financial institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in this state. A registrant shall maintain an office location in this state for the transaction of business as a mortgage broker in this state.

(2) No person shall act or hold that person's self out as a mortgage broker under the authority or name of a registrant or person exempt from sections 1322.01 to 1322.12 of the Revised Code without first having obtained a certificate of registration from the superintendent for every office to be maintained by the person for the transaction of business as a mortgage broker in this state.

(B)(1) No individual shall act as a loan originator without first having obtained a license from the superintendent. A loan originator shall be employed by or associated with a mortgage broker or any person or entity listed in division (G)(2) of section 1322.01 of the Revised Code, but shall not be employed by or associated with more than one mortgage broker or

person or entity at any one time.

(2) An individual acting under the individual's authority as a registered loan originator shall not be required to be licensed under division (B)(1) of this section.

(3) An individual who holds a valid temporary loan originator license issued pursuant to section 1322.042 of the Revised Code may engage in the business of a loan originator in accordance with sections 1322.01 to 1322.12 of the Revised Code during the term of the temporary license.

(C)(1) No person acting as a mortgage broker or loan originator shall fail to register with, and maintain a valid unique identifier issued by, the nationwide mortgage licensing system and registry.

(2) No person shall use a mortgage broker's or loan originator's unique identifier for any purpose other than as set forth in the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101.

Sec. 1322.042. (A) As used in this section:

(1) "Out-of-state loan originator" means an individual to whom both of the following apply:

(a) The individual holds a valid loan originator license, or comparable authority, issued pursuant to the law of any other state of the United States.

(b) The individual is registered, fingerprinted, and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(2) "Sponsor" means a registrant or entity described in division (G)(2) of section 1322.01 of the Revised Code that employs or is associated with an applicant for a temporary loan originator license and, during the term of the applicant's temporary license, covers the applicant under its corporate surety bond or requires the applicant to obtain and maintain a corporate surety bond.

(B) The superintendent of financial institutions may, in accordance with this section, issue to an out-of-state loan originator a temporary loan originator license that enables the licensee to engage in the business of a loan originator while the individual completes the requirements necessary to meet the conditions set forth in section 1322.041 of the Revised Code for a loan originator license. A temporary loan originator license shall be valid for a term of not more than one hundred twenty days from the date of issuance. A temporary loan originator license may not be renewed.

(C) An application for a temporary loan originator license shall be in writing, under oath, and in a form that meets the requirements of the nationwide mortgage licensing system and registry. The application shall be accompanied by a nonrefundable application fee, the amount of which shall

be determined by the superintendent in rule, and a certification that, as of the date of application, the applicant meets the following conditions:

(1) The applicant has at least two years of experience in the field of residential mortgage lending in the five years immediately preceding the date of application for the temporary loan originator license.

(2) The applicant has not previously applied for a temporary loan originator license in this state.

(3) The applicant has not had a loan originator license, or comparable authority, revoked in any governmental jurisdiction. For purposes of division (C)(3) of this section, a subsequent formal vacation of such a revocation shall not be considered a revocation.

(4) The applicant has not been convicted of, or pleaded guilty or nolo contendere to, any of the following in a domestic, foreign, or military court:

(a) During the seven-year period immediately preceding the date of application, a misdemeanor involving theft or any felony;

(b) At any time prior to the date of application, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.

For purposes of division (C)(4) of this section, any conviction for which the applicant has received a pardon shall not be considered a conviction.

(D) The superintendent shall issue a temporary loan originator license to the applicant if the superintendent finds that all of the following conditions are met:

(1) The application is accompanied by the application fee and the certification described in division (C) of this section.

(2) The applicant is registered, fingerprinted, and has a valid unique identifier through the nationwide mortgage licensing system and registry as of the date of application.

(3) The applicant has authorized the nationwide mortgage licensing system and registry to obtain a credit report for submission to the superintendent.

(4) The applicant has a sponsor that certifies employment of, or association with, the applicant and has signed the application.

(E) The sponsor of a temporary licensee shall have an affirmative duty to supervise the conduct of each temporary loan originator in the same manner as is required of its other licensees. If the temporary licensee's employment or association with the sponsor is terminated, the sponsor shall notify the division of financial institutions of the termination through the nationwide mortgage licensing system and registry. Upon the division's receipt of the notice, the sponsor shall no longer be held responsible for the conduct of the temporary licensee.

(F) The superintendent may, in accordance with Chapter 119. of the Revised Code, adopt rules necessary for the implementation and operation of this section.

Sec. 1322.043. If the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101, as amended, is modified after the effective date of this section, or any regulation, statement, or position is adopted under that act, to permit states to issue a temporary loan originator license to a registered loan originator, the superintendent shall, in accordance with section 111.15 of the Revised Code, adopt rules the superintendent considers necessary and appropriate to issue a temporary license to a registered loan originator.

SECTION 2. That existing sections 1109.22, 1304.55, 1321.52, and 1322.02 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 333

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____