



SPONSOR: Sen. DeLuca & Reps. Keeley & B. Short
Sens. Adams, Bunting, Cook, Katz, Sokola & Bonini
Reps. D.E. Williams, Bennett, Brady, Viola, Hocker,
Hudson, Lavelle & Ramone

DELAWARE STATE SENATE
145th GENERAL ASSEMBLY

SENATE BILL NO. 73

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE TO IMPLEMENT THE UNITED STATES SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (U.S. PUBLIC LAW 110-289).

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 Section 1. Amend Title 5 of the Delaware Code by deleting existing Chapter 24 in its entirety and substituting in
2 lieu thereof a new Chapter 24 to read as follows:

3 "CHAPTER 24. MORTGAGE LOAN ORIGINATORS.

4 § 2401. TITLE.

5 This Chapter may be cited as the 'Delaware Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or
6 Delaware S.A.F.E. Mortgage Licensing Act of 2009'.

7 §2402. PURPOSE.

8 (a) The activities of mortgage loan originators and the origination or offering of financing for residential real property have
9 a direct, valuable and immediate impact upon Delaware's consumers, Delaware's economy, the neighborhoods and
10 communities of Delaware, and the housing and real estate industry. The General Assembly finds that accessibility to
11 mortgage credit is vital to this State's citizens. The General Assembly also finds that it is essential for the protection of the
12 citizens of Delaware and the stability of Delaware's economy that reasonable standards for licensing and regulation of the
13 business practices of mortgage loan originators be imposed. The General Assembly further finds that the obligations of
14 mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to
15 warrant the regulation of the mortgage lending process. The purpose of this Chapter is to protect consumers seeking
16 mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent
17 practices on the part of mortgage loan originators.

18 (b) Therefore, the General Assembly establishes within this Chapter an effective system of supervision and enforcement of
19 the mortgage lending industry, including:

- 20 (1) the authority to issue licenses to conduct business under this Chapter, including the authority to write rules or
21 regulations or adopt procedures necessary to the licensing of persons covered under this Chapter;
- 22 (2) the authority to deny, suspend, condition or revoke licenses issued under this Chapter; and
- 23 (3) the authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended
24 purposes of this Chapter, including the authority to subpoena witnesses and documents, enter orders, including
25 cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from
26 office or employment.

27 § 2403. DEFINITIONS.

28 In this Chapter, unless the context otherwise requires:

- 29 (1) 'Commissioner' means the State Bank Commissioner.
- 30 (2) 'Depository institution' has the same meaning as in §3 of the United States Federal Deposit Insurance Act, and includes
31 any credit union.
- 32 (3) 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, the Comptroller of the
33 Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal
34 Deposit Insurance Corporation.
- 35 (4) 'Immediate family member' means a spouse, child, sibling, parent, grandparent or grandchild. This includes step-
36 parents, step-children, step-siblings, and adoptive relationships.
- 37 (5) 'Individual' means a natural person.
- 38 (6) 'Loan processor or underwriter' means an individual who performs clerical or support duties as an employee at the
39 direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under Chapters 21
40 or 22 of this Title.
- 41 a. For purposes of this paragraph (6), 'clerical or support duties' may include subsequent to the receipt of an
42 application:
- 43 1. the receipt, collection, distribution, and analysis of information common for the processing or
44 underwriting of a residential mortgage loan; and
- 45 2. communicating with a consumer to obtain the information necessary for the processing or underwriting
46 of a loan, to the extent that such communication does not include offering or negotiating loan rates or
47 terms, or counseling consumers about residential mortgage loan rates or terms.
- 48 b. An individual engaging solely in loan processor or underwriter activities, shall not represent to the public,
49 through advertising or other means of communicating or providing information including the use of business

50 cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform
51 any of the activities of a mortgage loan originator.

52 (7) 'Mortgage loan originator' means an individual who for compensation or gain or in the expectation of compensation or
53 gain:

54 a. takes a residential mortgage loan application; or

55 b. offers or negotiates terms of a residential mortgage loan;

56 c. but does not include:

57 1. an individual engaged solely as a loan processor or underwriter, except as otherwise provided in
58 §2404(d);

59 2. a person or entity that only performs real estate brokerage activities and is licensed or registered in
60 accordance with Delaware law, unless the person or entity is compensated by a lender, a mortgage broker,
61 or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan
62 originator; and

63 3. a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is
64 defined in §101(53D) of Title 11, United States Code.

65 (8) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing system developed and maintained
66 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the
67 licensing and registration of licensed mortgage loan originators.

68 (9) 'Nontraditional mortgage product' means any mortgage product other than a 30 year fixed rate mortgage.

69 (10) 'Person' means a natural person, corporation, company, limited liability company, partnership, association, or other
70 entity.

71 (11) 'Real estate brokerage activity' means any activity that involves offering or providing real estate brokerage services to
72 the public, including:

73 a. acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

74 b. bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

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

77 d. engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a
78 real estate agent or real estate broker under any applicable law; and

79 e. offering to engage in any activity, or act in any capacity, described in subparagraphs a., b., c., or d. of this
80 paragraph.

81 (12) 'Registered mortgage loan originator' means any individual who:

82 a. meets the definition of mortgage loan originator and is an employee of:

83 1. a depository institution;

84 2. a subsidiary that is:

85 A. owned and controlled by a depository institution; and

86 B. regulated by a federal banking agency; or

87 3. an institution regulated by the Farm Credit Administration; and

88 b. is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and
89 Registry.

90 (13) 'Residential mortgage loan' means any loan primarily for personal, family, or household use that is secured by a
91 mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in §103(v) of the United
92 States Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling
93 (as so defined).

94 (14) 'Residential real estate' means any real property located in Delaware, upon which is constructed, or intended to be
95 constructed, a dwelling.

96 (15) 'Unique identifier' means a number or other identifier assigned by protocols established by the Nationwide Mortgage
97 Licensing System and Registry.

98 § 2404. LICENSE AND REGISTRATION REQUIRED.

99 (a) An individual, unless specifically exempted from this Chapter under subsection (c) of this section, shall not engage in
100 the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and then
101 annually maintaining a license issued by the Commissioner under this Chapter. Each licensed mortgage loan originator
102 must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and
103 Registry. Every person licensed under this Chapter shall be a financial institution for purposes of Part I of this Title.

104 (b) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the
105 effective date for subsection (a) of this section shall be July 31, 2010, or such later date approved by the Secretary of the
106 United States Department of Housing and Urban Development, pursuant to the authority granted under United States Public
107 Law 110-289, §1508(a).

108 (c) The following are exempt from this Chapter:

109 (1) registered mortgage loan originators, when acting for an entity described in clauses 1., 2., or 3. of §2403(12)a.;

110 (2) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate

111 family member of the individual;

112 (3) any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served

113 as the individual's residence; and

114 (4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary

115 matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage

116 broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan

117 originator.

118 (d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or

119 underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under

120 subsection (a) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan

121 originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and

122 Registry.

123 (e) For the purposes of implementing an orderly and efficient licensing process, the Commissioner may establish licensing

124 rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or

125 licensed individuals, the Commissioner may establish expedited review and licensing procedures.

126 § 2405 LICENSE APPLICATION

127 (a) Applicants for a license shall apply in a form as prescribed by the Commissioner. Each such form shall request such

128 information as the Commissioner may designate and may be changed or updated as necessary by the Commissioner in

129 order to carry out the purposes of this Chapter.

130 (b) In order to fulfill the purposes of this Chapter, the Commissioner is authorized to establish relationships or contracts

131 with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage

132 Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees

133 or other persons subject to this Chapter.

134 (c) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the Commissioner is

135 authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this

136 Chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing

137 System and Registry.

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

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

142 and

143 (2) personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and
144 Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry
145 and the Commissioner to obtain:

146 a. an independent credit report obtained from a consumer reporting agency described in §603(p) of the
147 United States Fair Credit Reporting Act; and

148 b. information related to any administrative, civil or criminal findings by any governmental jurisdiction.

149 (e) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation
150 may have to maintain for purposes of subsections (d)(1) and (d)(2)b. of this section, the Commissioner may use the
151 Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and
152 distributing information to the United States Department of Justice or any governmental agency, notwithstanding the
153 provisions of §8527 of Title 11 of the Delaware Code.

154 (f) For the purposes of this section and in order to reduce the points of contact which the Commissioner may have to
155 maintain for purposes of subsection (d)(2) of this section, the Commissioner may use the Nationwide Mortgage Licensing
156 System and Registry as a channeling agent for requesting and distributing information to and from any source so directed
157 by the Commissioner, notwithstanding the provisions of §8527 of Title 11 of the Delaware Code.

158 (g) As part of an application, the applicant shall pay to the Commissioner as an investigation fee the sum of \$250 which
159 shall not be refundable. The applicant shall also pay a license fee of \$250, which shall be payable annually thereafter, and
160 that sum shall be allocated to and for the assistance of the Delaware Emergency Mortgage Assistance Program. No
161 abatement in the amount of the license fee shall be made if the license is issued for less than one (1) year or if the license is
162 surrendered, suspended, canceled or revoked prior to the expiration of the period for which such license was issued.

163 § 2406. ISSUANCE OF LICENSE; EXPIRATION AND SURRENDER.

164 (a) The Commissioner shall not issue a mortgage loan originator license unless the Commissioner makes at a minimum the
165 following findings:

166 (1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction,
167 except that a subsequent formal vacating of such revocation shall not be deemed a revocation.

168 (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign,
169 or military court:

170 a. during the 7-year period preceding the date of the application for licensing and registration; or

171 b. at any time preceding such date of application, if such felony involved an act of fraud, dishonesty,
172 breach of trust, or money laundering;

173 c. provided that any pardon of a conviction shall not be a conviction for the purposes of this subsection.

174 (3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the
175 confidence of the community and to warrant a determination that the mortgage loan originator will operate
176 honestly, fairly, and efficiently within the purposes of this Chapter. For purposes of this paragraph (3), applicants
177 have shown that they are not financially responsible when they have shown a disregard in the management of their
178 own financial condition. A determination that an applicant has not shown financial responsibility may include, but
179 not be limited to:

180 a. current outstanding judgments, except judgments solely as a result of medical expenses;

181 b. current outstanding tax liens or other government liens and filings;

182 c. foreclosures within the past three years; or

183 d. a pattern of seriously delinquent accounts within the past three years.

184 (4) The applicant has completed the pre-licensing education requirement described in §2407;

185 (5) The applicant has passed a written test that meets the test requirement described in §2408; and

186 (6) The applicant has met the surety bond requirement described in §2415.

187 (b) (1) If the Commissioner refuses to issue a license, the Commissioner shall notify the applicant in writing of that refusal,
188 of the reasons for the refusal, and of the applicant's right to request a hearing; provided, however, the Commissioner shall
189 retain any investigation or other fee charged for the expense of processing an initial application, notwithstanding that the
190 application was rejected.

191 (2) The Commissioner shall send a copy of the notice to the applicant at that person's last known mailing address
192 by certified mail, return receipt requested. If the applicant sends the Commissioner a written request for a hearing
193 within 10 days of the notice's mailing date, the Commissioner shall then hold that hearing in accordance with
194 Chapter 101 of Title 29.

195 (c) Every license issued under this Chapter shall expire on December 31 of each year.

196 (d) A licensee may surrender a license by delivering to the Commissioner a written notice of license surrender.

197 (e) An expiration or surrender of a license shall not affect civil or criminal liability for acts committed prior to that event,
198 and if the expiration or surrender occurs after the Commissioner issues a written order under §2413(b), the Commissioner
199 may proceed as if the expiration or surrender had not taken place.

200 (f) Every license issued pursuant to this Chapter shall remain in effect until the license shall have expired, or been
201 surrendered, revoked or suspended, and upon any of those events, the Commissioner shall notify the mortgage loan
202 originator and any affected licensee under this Title of that fact and that the mortgage loan originator may not engage in the
203 business of a mortgage loan originator with respect to any dwelling located in this State.

204 § 2407. PRE-LICENSING EDUCATION.

205 (a) In order to meet the pre-licensing education requirement referred to in §2406(a)(4), a person shall complete at least 20
206 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

207 (1) 3 hours of federal law and regulations;

208 (2) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

209 (3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

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

213 (c) Nothing in this section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage
214 Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the
215 applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

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

218 (e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in
219 subsection (a) of this section for any other state shall be accepted as credit towards completion of the pre-licensing
220 education requirements in this State.

221 (f) A person previously licensed under this Chapter subsequent to the effective date of this Chapter applying to be licensed
222 again must prove that they have completed all of the continuing education requirements for the year in which the license
223 was last held.

224 § 2408. TESTING.

225 (a) In order to meet the written test requirement referred to in §2406(a)(5), an individual shall pass, in accordance with the
226 standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System

227 and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry
228 based upon reasonable standards.

229 (b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test
230 adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

231 (1) ethics;

232 (2) federal law and regulation pertaining to mortgage origination;

233 (3) state law and regulation pertaining to mortgage origination; and

234 (4) federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional
235 mortgage marketplace, and fair lending issues.

236 (c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and
237 Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate
238 of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to
239 conduct the business of a mortgage loan originator.

240 (d) (1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test
241 score of not less than 75 percent correct answers to questions.

242 (2) An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the
243 preceding test.

244 (3) After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

245 (4) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake
246 the test, not taking into account any time during which such individual is a registered mortgage loan originator.

247 § 2409. STANDARDS FOR LICENSE RENEWAL.

248 (a) Every licensee who desires to continue to engage in the business of a mortgage loan originator with respect to any
249 dwelling located in this State shall, at least 30 days prior to the expiration of a license, apply to the Commissioner for a
250 license renewal in a form as prescribed by the Commissioner. Each such form shall request such information as the
251 Commissioner may designate and may be changed or updated as necessary by the Commissioner in order to carry out the
252 purposes of this Chapter.

253 (b) The minimum standards for license renewal for mortgage loan originators shall include the following:

254 (1) the mortgage loan originator continues to meet the minimum standards for license issuance under §2406(a)(1)-

255 (6);

256 (2) the mortgage loan originator has satisfied the annual continuing education requirements described in §2410;
257 and

258 (3) the mortgage loan originator has paid all required fees for renewal of the license.

259 (c) The Commissioner may mandate that an application for a license renewal shall be treated as a new application if the
260 renewal application is not on file with the office of the Commissioner at least thirty (30) days prior to the expiration of the
261 license.

262 § 2410. CONTINUING EDUCATION.

263 (a) In order to meet the annual continuing education requirements referred to in §2409(b)(2), a licensed mortgage loan
264 originator shall complete at least 8 hours of education approved in accordance with subsection (b) of this section, which
265 shall include at least:

266 (1) 3 hours of federal law and regulations;

267 (2) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

268 (3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

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

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

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

277 (e) A licensed mortgage loan originator:

278 (1) except as provided in subsection (h) of this section, may only receive credit for a continuing education course
279 in the year in which the course is taken; and

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

282 (f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may
283 receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2
284 hours credit for every 1 hour taught.

285 (g) The continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry in
286 subsection (a) of this section for any other state shall be accepted as credit towards completion of the continuing education
287 requirements in this State.

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

290 (i) A person meeting the requirements of §2409(b)(1) and (3) may make up any deficiency in continuing education as
291 established by rule or regulation of the Commissioner.

292 § 2411. AUTHORITY TO REQUIRE LICENSE.

293 (a) In addition to any other duties imposed upon the Commissioner by law, the Commissioner shall require mortgage loan
294 originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry.

295 (b) In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage
296 Licensing System and Registry. Notwithstanding any other statute to the contrary, the Commissioner may, for this purpose,
297 establish by rule, regulation or order requirements as necessary, including but not limited to:

298 (1) background checks for:

299 a. criminal history through fingerprint or other databases;

300 b. civil or administrative records;

301 c. credit history; or

302 d. any other information as deemed necessary by the Nationwide Mortgage Licensing System and
303 Registry;

304 (2) the payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and
305 Registry;

306 (3) the setting or resetting as necessary of renewal or reporting dates; and

307 (4) requirements for amending or surrendering a license or any other such activities as the Commissioner deems
308 necessary for participation in the Nationwide Mortgage Licensing System and Registry.

309 § 2412. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION

310 CHALLENGE PROCESS.

311 The Commissioner shall establish a process whereby mortgage loan originators may challenge information entered
312 into the Nationwide Mortgage Licensing System and Registry by the Commissioner.

313 § 2413. LICENSE REVOCATION OR SUSPENSION.

314 (a) The Commissioner may revoke, suspend, condition, or refuse to renew any license, or publicly reprimand a licensee
315 under this Chapter upon finding that the licensee:

316 (1) has violated or failed to comply with any provision of this Chapter; any rule, regulation, order, or supervisory
317 letter promulgated by the Commissioner under the authority of this Title; or any other law, rule or regulation of
318 this State or the federal government;

319 (2) has failed at any time to meet the requirements of §2406 or §2409 of this Chapter; or

320 (3) has withheld information or made a material misstatement in an initial or renewal application for a license.

321 (b) Whenever the Commissioner determines to take any action under this section, the Commissioner shall issue a written
322 order that shall include a statement of the facts upon which the action is based and a notice that the licensee may request a
323 hearing in accordance with Chapter 101 of Title 29.

324 (c) (1) Except as provided in paragraph (2) of this subsection, an order under this section shall not become effective less
325 than 10 days after its mailing date.

326 (2) The Commissioner may issue an order under this section which shall become effective immediately upon
327 issuance whenever in the opinion of the Commissioner, the public health, safety or welfare clearly requires
328 emergency action and the Commissioner's order so states.

329 (d) (1) Upon its issuance, the Commissioner shall send a copy of the order to the licensee at that person's last known
330 mailing address by certified mail, return receipt requested.

331 (2) If the licensee sends the Commissioner a written request for a hearing within 10 days of the order's mailing
332 date, the Commissioner shall then hold a hearing in accordance with Chapter 101 of Title 29, and except as
333 provided in subsection (c)(2) of this section, the order then shall not become effective until the conclusion of the
334 hearing.

335 (3) At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify,
336 amend or rescind the order.

337 (e) No action taken under this section shall impair or affect the obligation of any pre-existing lawful contract between any
338 licensee and any person.

339 § 2414. ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES.

340 (a) Upon finding that a person subject to this Chapter has violated or failed to comply with any provision of this Chapter;
341 any rule, regulation, order or supervisory letter promulgated by the Commissioner under the authority of this Title; or any
342 other law, rule or regulation of this State or the federal government, the Commissioner may:

343 (1) order that person to cease and desist from that violation or failure, from conducting any business subject to this
344 Chapter, or from engaging in any harmful activities;

345 (2) impose a civil money penalty on that person pursuant to subsection (b) of this section;

346 (3) order restitution against that person for that violation or failure;

347 (4) remove or ban that person from any employment by, or affiliation with, any financial institution; and

348 (5) order such other affirmative action as the Commissioner deems necessary.

349 (b) (1) The maximum civil money penalty for each violation or failure to comply described in subsection (a) of this
350 section shall be \$25,000.

351 (2) Any civil money penalty under this section may be in addition to any other action or remedy available to the
352 Commissioner or any order, judgment, penalty, fine or sentence imposed by a court or other governmental agency
353 in any administrative, civil or criminal proceeding.

354 (3) Any civil money penalty under this section shall be paid to the State Treasurer for deposit in the General Fund.

355 (c) An order issued under this section shall include a statement of the facts upon which it is based; a specification of the
356 activities prohibited, civil money penalty imposed, restitution to be paid, employment or affiliation prohibited, or other
357 affirmative action required; and a notice that the person against whom the order was issued may request a hearing in
358 accordance with Chapter 101 of Title 29.

359 (d) (1) Except as provided in paragraph (2) of this subsection, an order issued under this section shall not become effective
360 less than 10 days after issuance.

361 (2) The Commissioner may issue an order under this section which shall become effective immediately upon
362 issuance whenever in the opinion of the Commissioner, the violation or failure to comply specified in subsection
363 (a) of this section represents an immediate danger or substantial harm to the public.

364 (e) (1) Upon issuance of an order under this section, the Commissioner shall send a copy of the order to the person against
365 whom it is issued at that person's last known mailing address by certified mail, return receipt requested.

366 (2) If the person against whom the order was issued sends the Commissioner a written request for a hearing within
367 10 days of the order's mailing date, the Commissioner shall then hold that hearing in accordance with Chapter 101
368 of Title 29, and except as provided in subsection (d)(2) of this section, the order shall not become effective until
369 the conclusion of the hearing.

370 (3) At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify,
371 amend or rescind the order.

372 (f) The authority granted by this section shall be in addition to the authority granted by Part I of this Title.

373 § 2415. SURETY BOND REQUIRED.

374 (a) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the
375 mortgage loan originator is an employee or exclusive agent of a licensee under Chapters 21 or 22 of this Title, the surety
376 bond of the licensee under those Chapters can be used in lieu of the mortgage loan originator's surety bond requirement,
377 and in that event, the amount of the bond prescribed in this section, if greater, shall apply instead of the limits specified in
378 those Chapters.

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

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

382 (3) The Commissioner may promulgate rules or regulations with respect to the requirements for such surety bonds
383 as are necessary to accomplish the purposes of this Chapter.

384 (b) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as
385 determined by the Commissioner.

386 (c) When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.

387 (d) Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

388 §2416. CONFIDENTIALITY.

389 In order to promote more effective regulation and reduce regulatory burden through supervisory information
390 sharing:

391 (1) Except as otherwise provided in United States Public Law 110-289, §1512, the requirements under any federal
392 or State law regarding the privacy or confidentiality of any information or material obtained by or provided to the
393 Nationwide Mortgage Licensing System and Registry pursuant to this Chapter, and any privilege arising under
394 federal or State law (including the rules of any federal or State court) with respect to such information or material,
395 shall continue to apply to such information or material after the information or material has been disclosed to the
396 Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state
397 and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss
398 of confidentiality protections provided by federal or State law.

399 (2) For these purposes, the Commissioner is authorized to enter agreements or sharing arrangements with other
400 governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential
401 Mortgage Regulators or other associations representing governmental agencies.

402 (3) Information or material that is subject to a privilege or confidentiality under paragraph (1) of this section shall
403 not be subject to:

404 a. disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an
405 agency of the federal government or the respective state; or

406 b. subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with
407 respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information
408 or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such
409 person, that privilege.

410 (4) Any State law relating to the disclosure or confidentiality of any information or material described in this
411 section, including §8527 of Title 11 of the Delaware Code, that is inconsistent with this section shall be
412 superseded.

413 (5) This section shall not apply with respect to the information or material relating to the employment history of,
414 and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included
415 in the Nationwide Mortgage Licensing System and Registry for access by the public.

416 § 2417. INVESTIGATION AND EXAMINATION AUTHORITY.

417 (a) In addition to any other authority allowed under this Title, the Commissioner shall have the authority to conduct
418 investigations and examinations as follows:

419 (1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation
420 or termination, public reprimand, or general or specific inquiry or investigation to determine compliance with this
421 Chapter, the Commissioner shall have the authority to access, receive and use any books, accounts, records, files,
422 documents, information or evidence including but not limited to:

423 a. criminal, civil and administrative history information, including nonconviction data as specified in Title 11 of
424 the Delaware Code; and

425 b. personal history and experience information including independent credit reports obtained from a consumer reporting
426 agency described in §603(p) of the United States Fair Credit Reporting Act; and

427 c. any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation regardless
428 of the location, possession, control or custody of such documents, information or evidence.

429 (2) For the purposes of investigating violations or complaints arising under this Chapter, or for the purposes of
430 examination, the Commissioner may review, investigate, or examine any person subject to this Chapter, as often as
431 necessary in order to carry out the purposes of this Chapter. The Commissioner may also direct, subpoena, or

432 order the attendance of and examine under oath, all persons whose testimony may be required about the loans or
433 the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such
434 person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to
435 the inquiry.

436 (3) Each person subject to this Chapter shall make available to the Commissioner upon request all books and
437 records relating to such person's business operations.

438 (4) The Commissioner shall have access to all books and records of any licensee under Chapters 21 or 22 of this
439 Title and may interview such licensee's officers, principals, mortgage loan originators, employees, independent
440 contractors, agents, and customers concerning the business operations of any person subject to this Chapter.

441 (5) Each person subject to this Chapter shall make or compile reports or prepare other information as directed by
442 the Commissioner in order to carry out the purposes of this section including but not limited to:

443 a. accounting compilations;

444 b. information lists and data concerning loan transactions in a format prescribed by the Commissioner; or

445 c. such other information deemed necessary to carry out the purposes of this Chapter.

446 (6) In making any examination or investigation authorized by this Chapter, the Commissioner may control access
447 to any documents and records of the person under examination or investigation. The Commissioner may take
448 possession of the documents and records or place a person in exclusive charge of the documents and records in the
449 place where they are usually kept. During the period of control, no person shall remove or attempt to remove any
450 of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the
451 Commissioner has reasonable grounds to believe the documents or records of the person subject to this Chapter
452 have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Chapter, the
453 person subject to this Chapter or the owner of the documents and records shall have access to the documents or
454 records as necessary to conduct its ordinary business affairs.

455 (b) In order to carry out the purposes of this section, the Commissioner may:

456 (1) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to
457 conduct or assist in the conduct of examinations or investigations;

458 (2) enter into agreements or relationships with other government officials or regulatory associations in order to
459 improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or
460 procedures, and documents, records, information or evidence obtained under this section;

461 (3) use, hire, contract or employ public or privately available analytical systems, methods or software to examine
462 or investigate the person subject to this Chapter;
463 (4) accept and rely on examination or investigation reports made by other government officials, within or without
464 this State;
465 (5) accept audit reports made by an independent certified public accountant for the person subject to this Chapter
466 in the course of that part of the examination covering the same general subject matter as the audit and may
467 incorporate the audit report in the report of the examination, report of investigation or other writing of the
468 Commissioner; and
469 (6) assess persons who are subject to investigation or examination under this section the cost of the services
470 described in this subsection (b) and all other costs or expenses incurred as part of that investigation or
471 examination.

472 (c) The authority of this section shall remain in effect, whether a person subject to this Chapter acts or claims to act under
473 any licensing or registration law of this State, or claims to act without such authority.

474 (d) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove,
475 mutilate, destroy, or secrete any books, records, computer records, or other information.

476 § 2418. PROHIBITED ACTS AND PRACTICES.

477 It is a violation of this Chapter for a person subject to this Chapter to:

478 (1) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to
479 defraud any person;

480 (2) engage in any unfair or deceptive practice toward any person;

481 (3) obtain property by fraud or misrepresentation;

482 (4) solicit or enter into a contract with a borrower that provides in substance that the person subject to this Chapter
483 may earn a fee or commission through 'best efforts' to obtain a loan even though no loan is actually obtained for
484 the borrower;

485 (5) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the
486 terms are actually available at the time of soliciting, advertising, or contracting;

487 (6) conduct any business covered by this Chapter without holding a valid license as required under this Chapter,
488 or assist or aid and abet any person in the conduct of business under this Chapter without a valid license as
489 required under this Chapter;

- 490 (7) fail to make disclosures as required by this Chapter and any other applicable federal or State law including
491 regulations thereunder;
- 492 (8) fail to comply with this Chapter or rules or regulations promulgated under this Chapter, or fail to comply with
493 any other federal or State law, including the rules and regulations thereunder, applicable to any business
494 authorized or conducted under this Chapter
- 495 (9) make, in any manner, any false or deceptive statement or representation, or engage in 'bait and switch'
496 advertising;
- 497 (10) negligently make any false statement or knowingly and willfully make any omission of material fact in
498 connection with any information or reports filed with a governmental agency or the Nationwide Mortgage
499 Licensing System and Registry or in connection with any investigation or examination conducted by the
500 Commissioner or another governmental agency;
- 501 (11) make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the
502 independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or
503 promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent
504 judgment of the appraiser with respect to the value of the property;
- 505 (12) collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge
506 any fee prohibited by this Chapter;
- 507 (13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement
508 cost of the improvements as established by the property insurer; or
- 509 (14) fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

510 § 2419. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

511 Notwithstanding any State privacy law, the Commissioner is required to report regularly violations of this Chapter,
512 as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry
513 subject to the provisions contained in §2416.

514 § 2420. UNIQUE IDENTIFIER SHOWN.

515 The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential
516 mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other
517 documents as established by rule, regulation or order of the Commissioner.

518 § 2421. RECORDKEEPING.

519 Every licensee shall maintain such books, accounts and records as will enable the Commissioner to enforce full
520 compliance with this Chapter, which books, accounts and records shall be in such form, shall contain such information and
521 shall be kept in such manner as the Commissioner may require. Such records shall be kept at such place and shall be
522 preserved for such length of time as the Commissioner may specify.

523 § 2422. BROAD ADMINISTRATIVE AUTHORITY.

524 The Commissioner shall have the broad administrative authority to administer, interpret and enforce this Chapter,
525 and to promulgate rules or regulations implementing this Chapter, in order to carry out the intentions of the General
526 Assembly.

527 § 2423. PENALTY.

528 Violation of §2404 of this Title is a Class A misdemeanor.”

529 Section 2. Every person licensed under existing Chapter 24 of Title 5 of the Delaware Code to which new Chapter
530 24 of Title 5 applies shall at all times remain a financial institution under Part I of Title 5 until a final determination is made
531 concerning the issuance of a license to that person under new Chapter 24. Until the effective date for §2404(a) as specified
532 in §2404(b) of new Chapter 24 of Title 5, the provisions of existing Chapter 24 shall continue to apply to all licenses issued
533 under that existing Chapter; provided however, that the State Bank Commissioner may extend the duration of any such
534 license up to the effective date for §2404(a) of new Chapter 24. At any time after July 30, 2009, the State Bank
535 Commissioner may also begin issuing licenses under the new Chapter 24.

536 Section 3. Amend §2111 of Title 5 of the Delaware Code by adding a new subsection (c) to read as follows:

537 “(c) Each licensee shall submit to the Nationwide Mortgage Licensing System and Registry developed and maintained by
538 the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators reports of
539 condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System
540 and Registry may require.”

541 Section 4. Amend §2211 of Title 5 of the Delaware Code by designating the existing language of that section as
542 subsection (a) and adding a new subsection (b) to read as follows:

543 “(b) Each licensee that engages in the business of making mortgage loans, as defined by §2403(13) of this Title,
544 shall submit to the Nationwide Mortgage Licensing System and Registry developed and maintained by the Conference of
545 State Bank Supervisors and the American Association of Residential Mortgage Regulators reports of condition, which shall
546 be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may
547 require.”

548 Section 5. If any provision of this Act or its application to any person or circumstance is held invalid, the
549 remainder of the Act or the application of the provision to other persons or circumstances is not affected.

550 Section 6. This Act shall take effect on July 30, 2009.

SYNOPSIS

This Act replaces Title 5, Chapter 24 (“Mortgage Loan Originators”) to provide for the licensing of mortgage loan originators in accordance with the United States Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Author: Senator DeLuca