

2011 -- S 0507 SUBSTITUTE A

LC01228/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO FINANCIAL INSTITUTIONS

Introduced By: Senators Picard, and Gallo

Date Introduced: March 10, 2011

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 19-4-3 of the General Laws in Chapter 19-4 entitled "Regulatory
2 Oversight" is hereby amended to read as follows:

3 **19-4-3. Records of examinations and reports.** -- (a) The director or the director's
4 designee shall preserve a full record of each examination. The records and information contained
5 in reports of the regulated institution, ~~other than information required by law to be filed,~~ may be
6 provided by the director or the director's designee to the regulated institution examined ~~and, upon~~
7 ~~written request, to the federal bureau of investigation, the United States attorney general, federal~~
8 ~~bank regulatory or federal deposit insuring agencies, other state banking regulatory agencies, the~~
9 ~~Rhode Island state police, or the Rhode Island attorney general.~~

10 **(b) Confidential treatment.** – (1) Documents, materials or other information in the
11 possession or control of the division of banking that are obtained by or disclosed to the director or
12 the director's designee or any other person in the course of an examination or investigation made
13 pursuant to this chapter shall be confidential by law and privileged, shall not be subject to the
14 Access to Public Records Act, chapter 38-2, shall not be subject to subpoena, and shall not be
15 subject to discovery or admissible in evidence in any private civil action. However, the director
16 is authorized to use the documents, materials or other information in the furtherance of any
17 regulatory or legal action brought as a part of the director's official duties.

18 (2) Neither the director nor any person who received documents, materials or other
19 information while acting under the authority of the director or with whom such documents,

1 materials or other information are shared pursuant to this section shall be permitted or required to
2 testify in any private civil action concerning any confidential documents, materials, or
3 information subject to this section.

4 (3) In order to assist in the performance of the director's duties, the director:

5 (i) May share documents, materials or other information, including the confidential and
6 privileged documents, materials or information subject to subsection 19-14-3(b) with other state,
7 federal and international regulatory agencies and federal deposit insuring agencies, with the
8 Conference of State Banking Supervisors ("CSBS"), and its affiliates and subsidiaries, and with
9 state federal, and international law enforcement authorities, provided that the recipient agrees in
10 writing to maintain the confidentiality and privileged status of the document, material or other
11 information, and has verified in writing the legal authority to maintain confidentiality.

12 (ii) May receive documents, materials or information, including otherwise confidential
13 and privileged documents, materials or information from other state, federal and international
14 regulatory agencies and federal deposit insuring agencies, from the Conference of State Banking
15 Supervisors ("CSBS"), and its affiliates and subsidiaries, and from state, federal, and international
16 law enforcement authorities, and shall maintain as confidential or privileged any document,
17 material or information received with notice or the understanding that it is confidential or
18 privileged under the laws of the jurisdiction that is the source of the document, material or
19 information; and

20 (iii) May enter into written agreements with other state, federal and international
21 regulatory agencies and federal depositing insuring agencies, with the Conference of State
22 Banking Supervisors ("CSBS"), and its affiliates and subsidiaries, and with state, federal and
23 international law enforcement authorities governing sharing and use of information provided
24 pursuant to this section consistent with this section.

25 (4) The sharing of information by the director pursuant to this section shall not constitute
26 a delegation of regulatory authority or rulemaking, and the director is solely responsible for the
27 administration, execution and enforcement of the provisions of this section.

28 (5) No waiver of any applicable privilege or claim of confidentiality in the document,
29 materials or information shall occur as a result of disclosure to the director under this section or
30 as a result of sharing as authorized in subsection 19-14-3(b).

31 (6) Documents, materials or other information filed in the possession or control of CSBS
32 pursuant to this section shall be confidential by law and privileged, shall not be subject to the
33 Access to Public Records Act, chapter 38-2, shall not be subject to subpoena, and shall not be
34 subject to discovery or admissible in evidence in any private civil action.

1 ~~(b)~~ (c) The imparting of this information by the director or the director's designee other
2 than according to the provisions of this chapter shall be sufficient cause for removal, and any
3 such deputy, assistant, or officer, who, except in the discharge of his or her official duty and other
4 than as set out above, imparts this information shall be liable for a fine of not exceeding one
5 thousand dollars (\$1,000) and this deputy or assistant may also be removed from office or
6 employment by the director or the director's designee. These records, examinations, and reports
7 are not subject to the Access to Public Records Act, section 38-2-1 et seq.

8 SECTION 2. Section 19-14-23 of the General Laws in Chapter 19-14 entitled "Licensed
9 Activities" is hereby amended to read as follows:

10 **19-14-23. Examinations and investigations.** -- (a) For the purpose of discovering
11 violations of this title or securing information lawfully required, the director or the director's
12 designee(s) may at any time investigate the loans and business and examine the books, accounts,
13 records and files used therein, of every licensee and person who shall be engaged in any activity
14 that requires a license under this title, whether the person shall act or claim to act as principal or
15 agent, or under or without the authority of this title. For that purpose the director or the director's
16 designee(s) shall have free access to the offices and places of business, books, accounts, paper,
17 records, files, and safes, of all such persons. The director or the director's designee(s) shall have
18 authority to require the attendance of and to examine under oath any person whose testimony may
19 be required relative to the loans or the business or to the subject matter of any examination,
20 investigation, or hearing.

21 (b) The director or the director's designee shall make an examination of the affairs,
22 business, office, and records of each licensee and branch location at least once every eighteen
23 (18) months. The director or the director's designee may accept in lieu of an examination of the
24 business of a licensed mortgage loan originator, the examination by the director or the director's
25 designee of the licensed lender(s) or licensed loan broker who employ the licensed mortgage loan
26 originator and/or who employed the licensed mortgage loan originator during the period under
27 examination. The total cost of an examination made pursuant to this section shall be paid by the
28 licensee or person being examined, and shall include the following expenses:

29 (1) One hundred fifty percent (150%) of the total salaries and benefits plus one hundred
30 percent (100%) for the travel and transportation expenses for the examining personnel engaged in
31 the examinations. The cost of an examination of a mortgage loan originator licensee shall be
32 limited to twenty-five percent (25%) of the total salary and benefits for the personnel engaged in
33 an examination specific to a mortgage loan originator. The fees shall be paid to the director to and
34 for the use of the state. The examination fees shall be in addition to any taxes and fees otherwise

1 payable to the state;

2 (2) All reasonable technology costs related to the examination process. Technology costs
3 shall include the actual cost of software and hardware utilized in the examination process and the
4 cost of training examination personnel in the proper use of the software or hardware; and

5 (3) All necessary and reasonable education and training costs incurred by the state to
6 maintain the proficiency and competence of the examination personnel. All such costs shall be
7 incurred in accordance with appropriate state of Rhode Island regulations, guidelines and
8 procedures.

9 (c) All expenses incurred pursuant to subsections (b)(2) and (b)(3) of this section shall be
10 allocated equally to each licensee, other than licensed mortgage loan originators, no more
11 frequently than annually and shall not exceed an annual average assessment of fifty dollars
12 (\$50.00) per company for any given three (3) calendar year period. All revenues collected
13 pursuant to this section shall be deposited as general revenues. That assessment shall be in
14 addition to any taxes and fees otherwise payable to the state.

15 (d) The provisions of section 19-4-3 shall apply to records of examinations or
16 investigations of licensees; provided, however, the director or the director's designee is authorized
17 to make public the number of valid consumer complaints as determined by the director or the
18 director's designee filed against the licensee for a twelve (12) month period immediately
19 preceding the request for the information; and provided, further, that promptly following the
20 completion of any examination under subsection 29-14-23(b), the director or the director's
21 designee shall provide to the person examined a copy of the written report of the examination,
22 together with a notice requiring the person examined to file a written response or rebuttal to the
23 comments and recommendations contained in the examination report within thirty (30) days of
24 receipt thereof or such longer period as the director or the director's designee may specify.

25 (e) If the director or his or her designee has reason to believe that any person required to
26 be licensed under this chapter is conducting a business without having first obtained a license
27 under this chapter, or who after the denial, suspension, or revocation of a license is conducting
28 that business, the director or his or her designee may issue an order to that person commanding
29 him or her to cease and desist from conducting that business. The order shall provide an
30 opportunity to request a hearing to be held not sooner than three (3) days after issuance of that
31 order to show cause why the order should not become final. Any order issued pursuant to this
32 section shall become final if no request for a hearing is received by the director or his or her
33 designee within thirty (30) days of the issuance of the order. The order may be served on any
34 person by mailing a copy of the order, certified mail, return receipt requested, and first class mail

1 to that person at any address at which that person has done business or at which that person lives.
2 Any hearing held pursuant to this section shall be governed in accordance with chapter 35 of title
3 42. If that person fails to comply with an order of the director or his or her designee after being
4 afforded an opportunity for a hearing, the superior court for Providence County has jurisdiction
5 upon complaint of the department to restrain and enjoin that person from violating this chapter.

6 (f) The director may impose an administrative assessment, as well as the penalties
7 provided for under section 19-14-26, against any person named in an order issued under
8 subsection (e) or, in accordance with the rules and regulations promulgated pursuant to section
9 19-14-30, against any person who violates or participates in the violation of any of the applicable
10 provisions of this title, or any regulation promulgated pursuant to any provisions of this title. The
11 amount of the administrative assessment may not exceed one thousand dollars (\$1,000) for each
12 violation of this chapter or each act or omission that constitutes a basis for issuing the order. Any
13 person aggrieved by an administrative assessment shall have the opportunity to request a hearing
14 to be held in accordance with chapter 35 of title 42 within thirty (30) days of the imposition of
15 such administrative assessment.

16 SECTION 3. Sections 19-14.10-3, 19-14.10-4 and 19-14.10-14 of the General Laws in
17 Chapter 19-14.10 entitled "An Act Adopting the Federal Secure and Fair Enforcement for
18 Mortgage Licensing Act of 2009" are hereby amended to read as follows:

19 **19-14.10-3. Definitions.** -- For purposes of this chapter, the following definitions shall
20 apply:

21 (1) "Depository institution" has the same meaning as in section 3 of the Federal Deposit
22 Insurance Act, and includes any credit union.

23 (2) "Federal banking agencies" means the Board of Governors of the Federal Reserve
24 System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the
25 National Credit Union Administration, and the Federal Deposit Insurance Corporation.

26 (3) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or
27 grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

28 (4) "Individual" means a natural person.

29 (5) (i) "Loan processor or underwriter" means an individual who performs clerical or
30 support duties as an employee at the direction of and subject to the supervision and instruction of
31 a person licensed as a lender or as a loan broker, or exempt from licensing under chapters 19-14,
32 or 19-14.1.

33 (ii) For purposes of subsection (5)(i), "clerical or support duties" may include subsequent
34 to the receipt of an application:

1 (A) The receipt, collection, distribution, and analysis of information common for the
2 processing or underwriting of a residential mortgage loan; and

3 (B) Communicating with a consumer to obtain the information necessary for the
4 processing or underwriting of a loan, to the extent that such communication does not include
5 offering or negotiating loan rates or terms, or counseling consumers about residential mortgage
6 loan rates or terms.

7 (iii) ~~Representatives to the public.~~— An individual engaging solely in loan processor or
8 underwriter activities, shall not represent to the public, through advertising or other means of
9 communicating or providing information including the use of business cards, stationery,
10 brochures, signs, rate lists, or other promotional items, that such individual can or will perform
11 any of the activities of a mortgage loan originator.

12 (6) (i) "Mortgage loan originator" means:

13 (A) An individual who, for compensation or gain or in the expectation of compensation
14 or gain:

15 (I) Takes a residential mortgage loan application; or

16 (II) Offers or negotiates terms of a residential mortgage loan;

17 (B) Does not include an individual engaged solely as a loan processor or underwriter
18 except as otherwise provided in subsection 19-14.10-4(c);

19 (C) Does not include a person or entity that only performs real estate brokerage activities
20 and is licensed or registered in accordance with Rhode Island law, unless the person or entity is
21 compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of
22 such lender, mortgage broker, or other mortgage loan originator;

23 (D) Does not include a person or entity solely involved in extensions of credit relating to
24 timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code, as
25 amended; and

26 (E) Does not include a person (or its employees) engaged in servicing mortgage loans.
27 For purposes of this exclusion, "servicing mortgage loans" means, on behalf of the note holder,
28 collecting and receiving payments, including payments of principal, interest, escrow amounts,
29 and other sums due, on obligations due and owing to the note holder pursuant to a residential
30 mortgage loan, and, when the borrower is in default, or in reasonably foreseeable likelihood of
31 default, working with the borrower on behalf of the note holder and pursuant to the contract
32 between the person servicing mortgage loans and the note holder, to modify but not refinance,
33 either temporarily or permanently, the obligations, or otherwise finalizing collection of the
34 obligation through the foreclosure process.

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

3 (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee
4 of real property;

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

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

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

12 (E) Offering to engage in any activity, or act in any capacity, described in subparagraphs
13 (A), (B), (C), or (D) of this section.

14 (7) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing
15 system developed and maintained by the conference of state bank supervisors and the American
16 association of residential mortgage regulators for the licensing and registration of licensed
17 mortgage loan originators.

18 (8) "Nontraditional mortgage product" means any mortgage product other than a thirty
19 (30) year fixed rate mortgage.

20 (9) "Person" means a natural person, corporation, company, limited liability company,
21 partnership, association, or any other entity however organized.

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

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

24 (A) A depository institution;

25 (B) A subsidiary that is:

26 ~~(H)~~ (1) Owned and controlled by a depository institution; and

27 ~~(H)~~ (2) Regulated by a Federal banking agency; or

28 (C) An institution regulated by the farm credit administration; and

29 ~~(H)~~ (ii) Is registered with, and maintains a unique identifier through, the nationwide
30 mortgage licensing system and registry.

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

(12) "Residential real estate" means any real property located in Rhode Island, upon which is constructed or intended to be constructed a dwelling.

(13) "SAFE Act" means the Secure and Fair Enforcement for Mortgage Licensing Act, comprising sections 1501-1517 of the Housing and Economic Recovery Act of 2008, Public Laws 110-289.

~~(13)~~ (14) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

19-14.10-4. License and registration required. -- (a) An individual, unless specifically exempted from this chapter under subsection (b) 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 chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

(b) The following individuals are exempt from this chapter:

(1) Registered mortgage loan originators, when acting for an entity described in subparagraphs 19-14.10-3(10)(i)(A), (B), or (C) are exempt from this chapter.

(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.

(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.

(5) A licensed attorney when performing loan closing services for a licensed lender, licensed loan broker, or for an entity exempt from licensing under subdivision 19-14.1-10(a)(4);

(6) A mortgage loan originator: (i) Who is employed by a lender or loan broker licensed under chapter 19-14 and/or 19-14.1; (ii) Who works at a qualified location; (iii) Who is registered with, and maintains a unique identifier through the nationwide mortgage licensing system and registry; (iv) Who acts as a mortgage loan originator for residential mortgage loans secured by dwellings (as defined in Section 103(v) of the Truth in Lending Act) constructed or to be constructed on real property located in states other than Rhode Island; and (v) Who is licensed or registered as required by applicable law in each state in which such real property is located. As used herein, the term "qualified location" means a location licensed under this chapter which

serves as the primary place of employment of at least one mortgage loan originator licensed under chapter 19-14.10.

(c) An individual 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 chapters 19-14 and 19-14.10. 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.

(d) For the purposes of implementing an orderly and efficient licensing process the director or the director's designee may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the director or the director's designee may establish expedited review and licensing procedures as follows:

(1) A mortgage loan originator applicant whose employer at the time of application for a mortgage loan originator license is an entity described in subparagraphs 19-14.10-3(10)(i)(A), (B), or (C) and who has been assigned a unique identifier through the nationwide mortgage licensing system and registry and who has completed and filed with the director or the director's designee all information, documents and requirements for licensure pursuant to this chapter shall be permitted to continue to act as a mortgage loan originator for the period prior to action being taken on his or her application by the director or the director's designee;

(2) A mortgage loan originator applicant who has been assigned a unique identifier through the nationwide mortgage licensing system and registry and who has completed and filed with the director or the director's designee all information, documents and requirements for licensure pursuant to this chapter and whose employer at the time of application for a mortgage loan originator license is a lender or loan broker licensed under chapter 19-14 and 19-14.1, shall be permitted to continue to act as a mortgage loan originator for the period prior to action being taken on his or her application by the director or director's designee if the applicant and a senior officer or principal of such lender or loan broker files written attestation to the director or the director's designee that:

(i) The applicant is currently or has within the six (6) month period prior to the date of the application been acting as a registered mortgage loan originator in this state or as a state-licensed mortgage loan originator in another state, in either case under the provisions of Section 1507 of the SAFE Act;

(ii) The applicant has never had a mortgage loan license or registration denied, revoked,

or suspended in any governmental jurisdiction; and

(iii) the applicant has not been convicted of a felony that would otherwise authorize the director or the director's designee to deny the applicant a license.

(3) Any provisional authority to act as a mortgage loan originator issued pursuant to this subsection (d) shall expire on the earlier of: (i) The date on which the director or the director's designee issues or denies the application for the license; or (ii) One hundred twenty (120) days from the date of application for the license.

(4) The director or the director's designee may deny or suspend the rights of a lender or loan broker licensed under chapter 19-14 or 19-14.1 to employ a mortgage loan originator under this subsection (d) if the director or the director's designee finds that such lender or loan broker, a senior official or principal thereof, or the applicant failed to exercise due diligence and good faith when submitting the attestations required in subdivision (d)(1) or (d)(2) above.

19-14.10-14. Surety bond required. -- (a) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee of a lender or loan broker licensed under chapter 19-14, the surety bond of such lender or loan broker as required in accordance with the provisions of such chapter, increased to any higher amount, ~~and adjusted by the amounts~~ required by this section can be used in lieu of the mortgage loan originator's surety bond requirement.

(1) The surety bond shall 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 director or the director's designee.

(3) The director or the director's designee may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this chapter.

(b) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the director or the director's designee by regulation adopted within one hundred twenty (120) days of the effective date of this section.

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

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

(e) ~~A minimum net worth shall be continuously maintained for mortgage loan originators in accordance with this section. In the event that the mortgage loan originator is an employee, a~~

1 ~~lender or loan broker licensed under chapter 19-14, the net worth can be used in lieu of the~~
2 ~~mortgage loan originator's minimum net worth requirement.~~

3 ~~In addition:~~

4 ~~(1) Minimum net worth shall be maintained in an amount that reflects the dollar amount~~
5 ~~of loans originated as determined by the director or the director's designee.~~

6 ~~(2)~~ The director or the director's designee shall within one hundred twenty (120) days of
7 the effective date of this section promulgate rules or regulations with respect to the requirements
8 for ~~minimum net worth~~ surety bonds as are necessary to accomplish the purposes of this chapter.

9 SECTION 4. This act shall take effect upon passage.

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LC01228/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS

1 This act would eliminate the requirement that mortgage loan originators maintain a
2 minimum net worth as well as a minimum surety bond to qualify for licensure in the state and
3 would instead require maintenance of a surety bond. This act would also modify the information-
4 sharing provisions of the financial institutions examination statute to allow sharing of otherwise
5 confidential and privileged information with the Conference of State Banking Supervisors
6 ("CSBS").

7 This act would take effect upon passage.

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