



**Am. Sub. S.B. 76**  
124th General Assembly  
(As Passed by the General Assembly)

**Sens. Harris, White, Prentiss, Spada, Carnes, Robert Gardner, Hottinger, Fingerhut, Hagan, Johnson, Jacobson**

**Reps. Salerno, Blasdel, Beatty, Coates, Collier, Evans, Hoops, Husted, Kilbane, R. Miller, Ogg, Otterman, Reidelbach, Reinhard, Schmidt, Setzer, G. Smith, Sulzer, Webster, Wilson, Lendrum, Grendell, Widowfield, Hughes, Flowers, Clancy, Goodman, Jones, Rhine, Carmichael, Manning, Williams, Barnes, Cates, Key, Woodard, DeWine, Faber, Niehaus, Carey, Barrett, Britton, Cirelli, Core, Hollister, Allen, Womer Benjamin, Young, Roman, Strahorn, Latell**

**Effective date:** \*

---

**ACT SUMMARY**

? Modifies the Mortgage Brokers Law with respect to exemptions from the Law, issuance of mortgage broker certificates of registration, transfers of an interest in a registrant, persons responsible for the operations of a mortgage broker business, licensure of loan officers, examination and continuing education requirements, surety bond requirements, advertising, record retention, confidentiality of information, mortgage loan origination disclosure statements, bona fide third-party fees, prohibitions and penalties, and disciplinary actions.

---

**TABLE OF CONTENTS**

Regulation of mortgage brokers .....	2
Registration required; exemptions .....	2
Application for a certification of registration; investigation; renewal .....	5
Transfer of an ownership interest in a registrant .....	8
Surety bond requirement .....	8
Advertising: required disclosures.....	9

---

\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

Record retention; confidentiality of information.....	9
Mortgage loan origination disclosure statements.....	10
Bona fide third-party fees; special account; return of documents.....	11
Regulation of loan officers.....	12
License requirement .....	12
Application for a license; investigation.....	13
Issuance of a license; renewal .....	14
Examination and continuing education requirements.....	15
Prohibitions; criminal penalties .....	16
Disciplinary actions; civil penalties .....	18
Effective date; transition.....	19

---

## CONTENT AND OPERATION

### Regulation of mortgage brokers

#### Registration required; exemptions

(secs. 1322.01(G), (L), and (M), 1322.02(A) and (C), 1322.99(A), and 4712.01)

The Mortgage Brokers Law (secs. 1322.01 to 1322.12, and 1322.99 of the Revised Code) prohibits any person from acting 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. Under prior law, "**mortgage broker**" was defined as a person that, in the regular course of business, held that person out as being able to assist a buyer in obtaining a mortgage and charged or received money or other valuable consideration for providing this assistance. The Law provided specific exemptions from the definition of mortgage broker, including exemptions for (1) persons that made or collected loans, to the extent those activities were subject to licensure or registration by the state, (2) lenders approved by the U.S. Secretary of Housing and Urban Development for participation in a federal mortgage insurance program, (3) banks, savings banks, savings and loan associations, and credit unions, (4) budget and debt counseling services, (5) consumer reporting agencies, (6) mortgage bankers, (7) political subdivisions and governmental entities, and (8) colleges and universities.

The act amends the definition of "mortgage broker," removes the list of exemptions from the definition, and, instead, expressly exempts certain persons from the Mortgage Brokers Law. Under the act, a "**mortgage broker**" is any of the following:

(1) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration for providing this assistance;

(2) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker, and charges or receives from the mortgage broker money or other valuable consideration readily convertible into money for providing the information;

(3) A person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans. (For purposes of the act, a "**table-funding mortgage loan**" is a mortgage loan transaction in which the mortgage is initially payable to the mortgage broker, the mortgage broker does not use the mortgage broker's own funds to fund the transaction, and, by the terms of the mortgage or other agreement, the mortgage is simultaneously assigned to another person. A "**warehouse-lending mortgage loan**" is a mortgage loan transaction in which the mortgage is initially payable to the mortgage broker, the mortgage broker uses the mortgage broker's own funds to fund the transaction, and the mortgage is sold or assigned before the mortgage broker receives a scheduled payment on the mortgage.)

Under the act, the following persons are exempt from the Mortgage Brokers Law *only with respect to business engaged in or authorized by their charter, license, authority, approval, or certificate, or as authorized by (7) below*:

(1) A bank, savings bank, savings and loan association, or credit union;

(2) A budget and debt counseling service;

(3) A consumer reporting agency;

(4) Any political subdivision or governmental entity;

(5) A college or university;

(6) A person registered under the Mortgage Loan Law, provided that not more than 5% of the person's mortgage loans constitute table-funding mortgage loans or warehouse-lending mortgage loans. This exemption does *not* include any person that is also registered or licensed under the Mortgage Brokers Law.

(7) A mortgage banker. For purposes of the act, "**mortgage banker**" means any person that makes, services, buys, or sells mortgage loans, that underwrites the loans, and that meets at least one of the following criteria:

(a) The person has been directly approved by the U.S. Department of Housing and Urban Development (HUD) as a nonsupervised mortgagee with participation in the direct endorsement program. This includes a person that has been directly approved by HUD as a nonsupervised mortgagee with participation in the direct endorsement program and that makes loans in excess of the applicable loan limit set by the Federal National Mortgage Association (FNMA), provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of HUD. This exemption, however, does *not* include a mortgagee approved as a loan correspondent.

(b) The person has been directly approved by the FNMA as a seller/servicer. This includes a person that has been directly approved by the FNMA as a seller/servicer and that makes loans in excess of the applicable loan limit set by the FNMA, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the FNMA.

(c) The person has been directly approved by the Federal Home Loan Mortgage Corporation (FHLMC) as a seller/servicer. This includes a person that has been directly approved by the FHLMC as a seller/servicer and that makes loans in excess of the applicable loan limit set by the FHLMC, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the FHLMC.

(d) The person has been directly approved by the U.S. Department of Veterans Affairs as a nonsupervised automatic lender. This exemption, however, does *not* include a person directly approved by the Department as a nonsupervised lender, an agent of a nonsupervised automatic lender, or an agent of a nonsupervised lender.

(8) A person created solely for the purpose of securitizing loans secured by an interest in real estate, provided the person does not service the loans. (For purposes of the act, "**securitizing**" means the packaging and sale of mortgage loans as a unit for sale as investment securities, but only to the extent of those activities.)

The act also exempts from the Mortgage Brokers Law any individual who is employed by a person that is exempt from the Law, to the extent the individual is acting within the scope of the individual's employment and within the scope of the exempt person's charter, license, authority, approval, or certificate.

The act prohibits any person from acting or holding that person's self out as a mortgage broker *under the authority or name of a registrant or person exempt from the Mortgage Brokers Law* 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 Ohio. A violation of this prohibition is a felony of the fifth degree.

Lastly, the act makes a conforming change in the Credit Services Organization Law.

**Application for a certification of registration; investigation; renewal**

(secs. 1322.01(C), (E), and (H), 1322.03(A), (B), (D), and (E), and 1322.04; Section 5)

**Application fees.** Continuing law requires every application for a certificate of registration as a mortgage broker, and every renewal application, to be accompanied by a fee of \$350 for each location of an office to be maintained by the applicant. The act specifies that these fees are "nonrefundable," and exempts any applicant that is registered under the Mortgage Loan Law from payment of the fees. It also states that, if a check or other draft instrument is returned to the Superintendent for insufficient funds, the Superintendent must notify the registrant by certified mail, return receipt requested, that the certificate of registration issued or renewed in reliance on the check or other draft instrument will be canceled unless the registrant, within 30 days after receipt of the notice, submits the application or renewal fee and a \$100 penalty to the Superintendent. If the registrant does not submit the fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned to the Superintendent for insufficient funds, the certificate of registration is to be canceled immediately without a hearing and the registrant must cease activity as a mortgage broker.

**Designation and qualifications of operations manager.** The act revises what information is required to be included in an application. Under prior law, an applicant that was a partnership designated one of the partners as responsible for managing the operations of the business. A corporate applicant designated one of the shareholders as responsible for business operations, and an applicant that was any other entity designated a natural person that owns 5% or more of the entity as responsible for managing the operations of the business.

Under the act, any applicant that is a partnership, corporation, limited liability company, or other business entity or association is to designate an employee or owner of the applicant as the applicant's operations manager. The act states that, while acting as the operations manager, an employee or owner cannot be employed by any other mortgage broker. (An "**operations manager**" is defined as the individual responsible for the everyday operations, compliance requirements, and management of a mortgage broker business. **Employee**" is

defined as an individual for whom a mortgage broker, in addition to providing a wage or salary, pays social security and unemployment taxes; provides workers' compensation coverage; and withholds local, state, and federal income taxes. "Employee" also includes any shareholder, member, or partner of a registrant who acts as a loan officer or operations manager of the registrant, but for whom the registrant is prevented by law from making income tax withholdings.)

The act removes transitional language that provided for the phasing-out of a prior educational qualification for persons designated as responsible for the operation of a mortgage broker business seeking *original* registration. Consequently, the operations manager of a mortgage broker seeking original registration is subject only to an *experience* requirement. Under that requirement, evidence must be provided in the application that the operations manager possesses at least three years of experience in the mortgage and lending field or at least three years of other experience related specifically to the business of mortgage loans that the Superintendent determines meets the requirements of this provision. The act also requires the applicant to show that its operations manager has successfully completed an examination prescribed by the Superintendent and, for purposes of registration renewals on and after January 1, 2003, that the operations manager has completed the required hours of continuing education (see below).

In addition, the act removes a transitional provision related to a *renewal* certificate of registration. Under that provision, if the operations manager had qualified for original registration by meeting the educational requirements, that operations manager could obtain a *renewal* certificate of registration under the Law until March 18, 2002. However, the act addresses the removal of this transitional provision by providing that authority to obtain a *renewal* certificate of registration is not affected by the act until March 18, 2002; *except that*, all requirements, except the experience requirements, applicable to operations managers under the act apply to that person on the date that the act takes effect (six months after its enactment). On and after March 18, 2002, a person not meeting the experience requirements provided in the act or any other requirement applicable to an operations manager under the act must not be designated as an operations manager on an application for a certificate of registration as a mortgage broker.

**Foreign businesses.** Continuing law requires a foreign corporation to provide evidence in its application that it maintains a license to transact business in Ohio. The act applies this requirement to all foreign business entities that apply for a certificate of registration.

**Effect of past criminal acts.** With respect to past convictions, applicants were required to provide a statement that the applicant had not been convicted of

or pleaded guilty to a felony criminal offense or any criminal offense involving fraud. Under the act, the statement must be as to *whether* the applicant *or, to the best of the applicant's knowledge, any shareholder, member, partner, operations manager, or employee of the applicant* has been convicted of or pleaded guilty to any criminal offense *involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking* or any criminal offense *involving money or securities*. In addition, the act requires an applicant to provide a statement as to whether the applicant *or, to the best of the applicant's knowledge, any shareholder, member, partner, operations manager, or employee of the applicant* has been subject to any adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty. If the applicant or any of those other persons has pleaded guilty to or been convicted of such an offense, or has been subject to such a judgment, the Superintendent *must* issue a certificate of registration *if* (1) the applicant has proven to the Superintendent, by a preponderance of the evidence, the applicant's or other person's activities and employment record since the conviction or judgment show that the applicant or other person is honest, truthful, and of good reputation, and (2) there is no basis in fact for believing that the applicant or other person will commit such an offense or be subject to such a judgment again.

**Timing of information, investigation, and renewal fees.** If an application does not contain all of the information required, and if that information is not submitted to the Superintendent within 90 days after the Superintendent requests the information in writing, the act permits the Superintendent to consider the application withdrawn.

Continuing law requires the Superintendent, upon receiving an application, to conduct an investigation of the applicant. Under the act, that investigation must include a criminal records check based on the applicant's fingerprints and a civil records check.

Prior law provided that if any renewal fee was received after April 30, the certificate of registration was not to be considered renewed, and the applicant was to cease activity as a mortgage broker. Under the act, this provision does not apply *if* the applicant submits the renewal fee and a \$100 penalty to the Superintendent no later than May 31.

**Transfer of registration.** Lastly, the act provides that a certificate of registration, or the authority granted under such a certificate, is not transferable or assignable and cannot be franchised by contract or any other means.

### **Transfer of an ownership interest in a registrant**

(sec. 1322.021)

The act requires a registrant that is a corporation, limited liability company, partnership, trust, or other business entity or association to notify the Division of Financial Institutions of every sale, transfer, or hypothecation of any stock, security, membership, partnership, or other equitable, beneficial, or ownership interest in the entity or association, if the interest represents at least a 5% membership, partnership, or other equitable, beneficial, or ownership interest in the entity or association.

The act provides that every person that acquires or otherwise receives such an interest is subject to the Mortgage Brokers Law. In addition, the act permits the Division to make any investigation necessary to determine whether any fact or condition exists that, if it had existed at the time of the original application for a certificate of registration, the fact or condition would have warranted the Division to deny the application. If such a fact or condition is found, the Division may, in accordance with the Administrative Procedure Act, revoke the registrant's certificate.

### **Surety bond requirement**

(sec. 1322.05)

The Mortgage Brokers Law previously required each registrant to obtain a corporate surety bond for the exclusive benefit of any person injured by a violation of the Law. The bond must have been in the penal sum of at least \$25,000 and an additional penal sum of \$5,000 for each location, in excess of one, at which the registrant conducted business.

The act increases the required amount of the bond to \$50,000, and to \$10,000 for each location in excess of one. The act requires a registrant, in addition to obtaining a bond, to *maintain* the bond *in effect at all times*. It states that the term of the bond must coincide with the term of registration, and that the bond is for the exclusive benefit of any *buyer* injured by a violation of the Mortgage Brokers Law by an employee, licensed loan officer, or registrant. (For purposes of the Law, "buyer" is defined as an individual solicited to purchase or who purchases the services of a mortgage broker for purposes of obtaining a loan other than a *business loan* as that term is described under the Interest and Usury Law (sec. 1322.01(A)).

Prior law required a registrant to give notice to the Superintendent of any action that was brought against the registrant and of any judgment that was entered



against the registrant by a person injured by a violation of the Mortgage Brokers Law. Under the act, notice is required of any action brought *by a buyer* against the registrant *or loan officer of the registrant alleging injury by a violation of the Mortgage Brokers Law*, as well as of any judgment entered against the registrant *or loan officer by a buyer* injured by such a violation.

Lastly, the act requires a registrant to cease all mortgage broker activity in Ohio if the registrant fails to comply with the surety bond requirement.

**Advertising: required disclosures**

(secs. 1322.09 and 1322.11(A)(1))

Mortgage brokers continue to be required to disclose, in any printed or published advertisement relating to the mortgage broker's services, the number designated on the mortgage broker's certificate of registration. The act requires that the name and street address of the mortgage broker also be disclosed, and expands the application of this provision to any "televised, broadcast, or electronically transmitted" advertisement, "including on any electronic site accessible through the internet."

The act permits a buyer injured by a violation of this provision to bring an action for recovery of damages.

**Record retention; confidentiality of information**

(secs. 1322.06 and 1322.061)

Under prior law, a registrant was required to maintain records pertaining to its mortgage broker business for two years after the final entry on such records. The act requires that such records be maintained for "four years."

The act also revises the provisions of law dealing with confidentiality of information. Under prior law, all information obtained by the Superintendent or the Superintendent's deputies, examiners, assistants, agents, or clerks, including information obtained in the course of examining a registrant or investigating an applicant for a certificate of registration, was privileged and confidential for all purposes except when it was necessary for the Superintendent to take official action regarding the affairs of the registrant or in connection with criminal proceedings.

Under the act, the following information is privileged and confidential:

(1) Examination information, and any information leading to or arising from an examination;

(2) Investigation information, and any information arising from or leading to an investigation.

The information must remain privileged and confidential for all purposes except when it is necessary for the Superintendent to take official action regarding the affairs of a registrant, or in connection with civil or criminal investigations or proceedings conducted by the Attorney General or a county prosecutor. The Superintendent may share examination and investigation information with any law enforcement agency or any other state or federal regulatory agency. Any information shared with the Attorney General, a county prosecutor, or a law enforcement agency or other state or federal regulatory agency must remain privileged and confidential and can only be used in connection with an official investigation, proceeding, or action.

The act provides that all application information is a public record, but specifically excludes social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information.

**Mortgage loan origination disclosure statements**

(secs. 1322.062 and 1322.11(A)(1))

The act requires a registrant, within three business days after taking an application for a loan from a buyer, to deliver to the buyer a mortgage loan origination disclosure statement that contains all of the following:

- (1) The name, address, and telephone number of the buyer;
- (2) The typewritten name of the loan officer and the number designated on the loan officer's license;
- (3) The street address, telephone number, and facsimile number of the registrant and the number designated on the registrant's certificate of registration;
- (4) The signature of the loan officer or registrant;
- (5) A statement indicating whether the buyer is to pay for the services of a bona fide third party if the registrant is unable to assist the buyer in obtaining a mortgage;
- (6) A statement that describes the method by which the fee to be paid by the buyer to the registrant will be calculated;

(7) A statement that the lender may pay compensation to the registrant;

(8) A description of all of the services the registrant has agreed to perform for the buyer;

(9) A statement that the buyer has not entered into an exclusive agreement for brokerage services.

If there is any change in the information provided under (6) or (8), above, the registrant must provide the buyer with the revised mortgage loan origination disclosure statement no later than three days after the change occurs, or the date the loan is closed, whichever is earlier.

The act permits a buyer injured by a violation of this provision to bring an action for recovery of damages.

**Bona fide third-party fees; special account; return of documents**

(sec. 1322.08)

The act prohibits a registrant from failing to (1) maintain a special account, (2) deposit into the special account any bona fide third-party fee the registrant receives, and (3) pay the fees to the bona fide third party from the registrant's special account.

Under continuing law, a registrant is generally prohibited from receiving fees for assisting a buyer until all of the services that the registrant has agreed to perform are completed and the proceeds of the mortgage loan have been disbursed. However, certain fees may be paid for services performed by a bona fide third party *if* the fees are paid directly by the buyer to the bona fide third party or the fees are deposited by the registrant into the registrant's special account. Under prior law, those fees included (1) fees to obtain a credit report, (2) fees for notary services, (3) fees authorized by law to record, file, or release a security interest or mortgage, (4) fees for the performance of a title search, appraisal, or survey, and (5) fees charged by a lender for locking in an interest rate. The act removes from this list the fees described in (3), above.

Generally, if fees are paid by a buyer for the performance of a title search, appraisal of the real estate, or survey of the real estate, but the registrant is unable to assist in obtaining a mortgage for the buyer, the registrant must return to the buyer the original documents prepared by the bona fide third party. However, under the act, the registrant is permitted, with respect to any appraisal, to return either the original or a copy.

(Under continuing law, "**special account**" is defined as a depository account with a financial institution that is separate and distinct from any personal or other account of the registrant and that is maintained solely for the holding and payment of fees for services performed by bona fide third parties and received by the registrant from buyers that the registrant assists in obtaining mortgages. "**Bona fide third party**" means a person that is not an employee of, related to, or affiliated with, the registrant.)

### **Regulation of loan officers**

#### **License requirement**

(secs. 1322.01(E), 1322.02(B), 1322.031(E) and (F), 1322.11(A)(1), and 1322.99(C))

The act prohibits any person, on the person's own behalf or on behalf of any other person, from acting as a loan officer without first having obtained a license from the Superintendent of Financial Institutions. A violation of this prohibition is a misdemeanor of the first degree, and a buyer injured by that violation may bring an action for recovery of damages.

For purposes of the act, "**loan officer**" is defined as an employee who originates mortgage loans in consideration of direct or indirect gain, profit, fees, or charges. "Loan officer" also includes an employee who solicits financial and mortgage information from the public for sale to another mortgage broker.

A loan officer cannot be employed by more than one mortgage broker at any one time. The business of a loan officer principally must be transacted at an office of the employing mortgage broker, which office is registered in accordance with continuing law. In addition, each original license must be deposited with and maintained by the employing mortgage broker at the mortgage broker's main office. A copy of the license must be maintained and displayed at the office where the loan officer principally transacts business.

If a loan officer's employment is terminated, the mortgage broker must return the original license to the Superintendent within five business days after the termination. The act permits a licensee to (1) request the transfer of the license to another mortgage broker by submitting a relocation application, along with a \$15 fee, to the Superintendent, or (2) request the Superintendent in writing to hold the license in escrow for a period not to exceed one year. Any licensee whose license is held in escrow must cease activity as a loan officer.

A mortgage broker may employ a loan officer on a temporary basis pending the transfer of the loan officer's license to the mortgage broker, *if* the mortgage

broker receives written confirmation from the Superintendent that the loan officer is licensed pursuant to the act.

The act states that a license, or the authority granted under such a license, is not assignable and cannot be franchised by contract or any other means.

**Application for a license; investigation**

(sec. 1322.031(A) to (D))

An application for a license as a loan officer must be in writing, under oath, and in the form prescribed by the Superintendent. It must be accompanied by a nonrefundable application fee of \$100.

The application must provide all of the following:

- (1) The name and address of the applicant;
- (2) A statement as to whether the applicant has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities;
- (3) A statement as to whether the applicant has been subject to an adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty;
- (4) Any further information that the Superintendent requires.

Upon the filing of an application, the Superintendent is required to investigate the applicant. The investigation must include a criminal records check based on the fingerprints of the applicant and a civil records check. If, in order to issue a license to an applicant, investigation by the Superintendent outside Ohio is necessary, the Superintendent may require the applicant to advance sufficient funds to pay the actual expenses of the investigation, if it appears that these expenses will exceed \$100. The Superintendent is to provide the applicant with an itemized statement of the actual expenses that the applicant is required to pay.

All funds advanced and application and renewal fees and penalties paid to the Superintendent under the act are to be paid by the Superintendent to the Treasurer of State to the credit of the Consumer Finance Fund under continuing law.

If an application for a license does not contain all of the information required under the act, and if that information is not submitted to the

Superintendent within 90 days after the Superintendent requests the information in writing, the Superintendent may consider the application withdrawn.

**Issuance of a license; renewal**

(sec. 1322.041)

Upon the conclusion of an investigation, the Superintendent must issue a loan officer license to the applicant if the Superintendent finds that the following conditions are met:

(1) The application is accompanied by the application fee. If a check or other draft instrument is returned to the Superintendent for insufficient funds, the Superintendent must notify the licensee by certified mail, return receipt requested, that the license issued in reliance on the check or other draft instrument will be canceled unless the licensee, within 30 days after receipt of the notice, submits the application fee and a \$100 penalty to the Superintendent. If the licensee does not submit the application fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned to the Superintendent for insufficient funds, the license is to be canceled immediately without a hearing and the licensee must cease activity as a loan officer.

(2) The applicant complies with the Mortgage Brokers Law;

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

(4) The applicant has not been subject to an adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty, or, if the applicant has been subject to such a judgment, the applicant has proven to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the judgment show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will be subject to such a judgment again.

(5) The applicant's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Mortgage Brokers Law.

A loan officer license may be renewed annually on or before April 30, if the Superintendent finds that all of the following conditions are met:

(1) The renewal application is accompanied by a nonrefundable renewal fee of \$100. If a check or other draft instrument is returned to the Superintendent for insufficient funds, the Superintendent must notify the licensee by certified mail, return receipt requested, that the license renewed in reliance on the check or other draft instrument will be canceled unless the licensee, within 30 days after receipt of the notice, submits the renewal fee and a \$100 penalty to the Superintendent. If the licensee does not submit the renewal fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned to the Superintendent for insufficient funds, the license is to be canceled immediately without a hearing and the licensee must cease activity as a loan officer.

(2) On and after January 1, 2003, the loan officer has completed, during the immediately preceding calendar year, at least six hours of continuing education as required under the act (see below).

(3) The applicant meets the conditions set forth in (2) to (5), above.

(4) The applicant's license is not subject to an order of suspension or revocation by the Superintendent.

If a license renewal application or renewal fee is received by the Superintendent after April 30, the license is not to be considered renewed, and the applicant must cease activity as a loan officer. This provision does not apply, however, if the applicant submits the renewal application and fee and a \$100 penalty to the Superintendent no later than May 31.

### **Examination and continuing education requirements**

(secs. 1322.03(A)(9), 1322.04(A)(9) and (B), 1322.041(B)(2), 1322.051, and 1322.052)

The act requires each person designated to act as *operations manager* for a mortgage broker business to submit to an examination approved by the Superintendent of Financial Institutions. Evidence of the successful completion of that examination is required for the issuance of a certificate of registration and for the renewal of such a certificate.

The act also requires each licensee, within 90 days after the original issuance of the *loan officer* license, to successfully complete an examination approved by the Superintendent. Failure to comply with this requirement results in the termination of the license by operation of law.

On and after January 1, 2002, each loan officer licensee and each person designated to act as operations manager for a mortgage broker business is required by the act to complete at least six hours of continuing education every calendar year. To fulfill this requirement, the six hours of continuing education must be offered in a course or program of study approved by the Superintendent. Compliance with this requirement is a condition to the renewal of a loan officer license or of a mortgage broker certificate of registration, as the case may be.

**Prohibitions; criminal penalties**

(secs. 1322.07 to 1322.073 and 1322.99)

The act modifies the prohibitions and criminal penalties provided in the Mortgage Brokers Law, expands their application, and adds additional prohibitions, as follows:

--Prior law prohibited any *registrant* or *applicant* for a certificate of registration as a mortgage broker from doing any of the following:

(1) Obtaining a certificate of registration through any false or fraudulent representation or making any substantial misrepresentation in any registration application;

(2) Making false promises through advertising or other means or engaging in a continued course of misrepresentations;

(3) Engaging in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) Failing to notify the Division of Financial Institutions if the registrant or applicant was convicted of or pleaded guilty to a felony criminal offense or any criminal offense involving fraud.

Under prior law, a violation of any of these prohibitions was subject to disciplinary action by the Superintendent of Financial Institutions and civil penalties, and the criminal penalty for a violation was a fifth degree felony.

Under the act, these prohibitions apply to mortgage brokers, loan officer licensees, and applicants for a loan officer license, as well as to registrants and applicants for a certificate of registration as a mortgage broker. In addition, the

prohibition set forth in (1), above, is modified by the act to prohibit obtaining a certificate of registration as a mortgage broker or loan officer license "through any false or fraudulent representation of a material fact or any omission of a material fact required by state law." The prohibition set forth in (2), above, is modified to prohibit making "false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means." The act retains (3), above. In (4), above, the act specifies that the notice be provided "within 30 days" after being convicted of or pleading guilty to "any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities."

In addition, the act prohibits both of the following:

(5) Knowingly making, proposing, or soliciting fraudulent, false, or misleading statements on any mortgage document or on any document related to a mortgage, including a mortgage application, real estate appraisal, or real estate settlement or closing document. For purposes of the act, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

(6) Knowingly instructing, soliciting, proposing, or otherwise causing a buyer to sign in blank a mortgage related document.

The act eliminates the *criminal* penalty for violations of (1) to (4) above. However, it adds that the penalty for a violation of (5) or (6), above, is a felony of the fifth degree.

--The act prohibits any mortgage broker, mortgage broker registrant, or loan officer licensee from doing any of the following:

(1) Retaining original documents provided to the mortgage broker, registrant, or licensee by the buyer in connection with the loan application, including income tax returns, account statements, or other financial related documents;

(2) Receiving, directly or indirectly, a premium on the fees charged for services performed by a bona fide third party;

(3) Paying or receiving, directly or indirectly, a referral fee or kickback of any kind to or from a bona fide third party or other party with a related interest in the transaction, such as a home improvement builder, real estate developer, or real estate broker or agent, for the referral of business.

A violation of (1) or (2), above, is a felony of the fifth degree; a violation of (3), above, is a felony of the fourth degree.

--The act prohibits any person, in connection with any examination or investigation conducted by the Superintendent under the Mortgage Brokers Law, from knowingly (1) circumventing, interfering with, obstructing, or failing to cooperate, including making a false or misleading statement, failing to produce records, or intimidating or suborning any witness, or (2) tampering with, altering, or manufacturing any evidence.

--The act prohibits any person from acquiring, selling, transferring, or hypothecating any interest in a registrant or an applicant for a certificate of registration as a mortgage broker in order to obfuscate or conceal the true ownership or control of the registrant or applicant.

A violation of any of the prohibitions set forth in the two previous paragraphs is subject to disciplinary action by the Superintendent.

**Disciplinary actions; civil penalties**

(secs. 1322.10(A)(1) and (E) and 1322.11)

Continuing law authorizes the Superintendent of Financial Institutions to suspend, revoke, or refuse to issue or renew a certificate of registration as a mortgage broker if the Superintendent finds a violation of specified provisions of the Mortgage Brokers Law. The act extends the application of this provision to include loan officer licensees, and permits the Superintendent to take any of those actions if the Superintendent finds:

(1) A violation of or failure to comply with *any* provision of the Mortgage Brokers Law or any other law applicable to the business conducted under a mortgage broker certificate of registration; or

(2) A conviction of or guilty plea to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

Under the act, if the Superintendent revokes the certificate of registration as a mortgage broker or the loan officer license of a registrant or licensee who is convicted of or plead guilty to a criminal violation of any provision of the Mortgage Brokers Law or any criminal offense described in (2), above, the revocation is permanent.

The act also modifies and expands the violations for which an injured buyer may bring an action for recovery of damages. Accordingly, the act eliminates a cause of action permitted under prior law for a mortgage broker registrant's failure to comply with the record retention requirement. However, the act adds a number of violations for which an injured party may bring a civil action for damages. These include violations where:

(1) A mortgage broker registrant fails to timely provide to a buyer a mortgage loan origination disclosure statement or, if necessary, a revised mortgage loan origination disclosure statement;

(2) A mortgage broker, mortgage broker registrant, loan officer licensee, or applicant for mortgage broker registration or loan officer licensure has violated the act's provisions generally relating to (a) misrepresentations in applications for registration or licensure, advertisement misrepresentations, or fraudulent conduct, (b) failure to timely notify the Division of Financial Institutions about actions involving specified criminal offenses, or (c) falsifying mortgage documents or mortgage-related documents or causing a buyer to sign a blank mortgage document;

(3) A mortgage broker, mortgage broker registrant, or loan officer licensee (a) retains original documents provided by a buyer in connection with a loan application, (b) receives a premium on the fees for services provided by a bona fide third party, or (c) pays or receives referral or kickback fees from a bona fide third party or other party interested in the transaction;

(4) A mortgage broker registrant fails to maintain, make deposits, or make payments, as described in the act, relating to a private account; or

(5) A mortgage broker fails to make specified disclosures in advertisements.

**Effective date; transition**

(Sections 3 and 4)

The act provides that it is to take effect six months after the act's effective date. It also states that it is the intent of the General Assembly that the Superintendent of Financial Institutions take any action necessary to provide for an orderly transition for those persons who, on the effective date of the act, perform the functions, duties, or powers prescribed for registrants and licensees under the act. Consequently, the Division of Financial Institutions is to accept registration and license applications submitted by such persons beginning on the

effective date of the act and to make every effort possible to act upon the applications within the six-month period immediately following that date.

---

## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-20-01	p. 225
Reported, S. Finance & Financial Institutions	04-25-01	p. 310
Passed Senate (32-0)	04-25-01	pp. 310-311
Reported, H. Financial Institutions	06-05-01	p. 622
Passed House (99-0)	06-12-01	pp. 643-645
Senate concurred in House amendments (33-0)	06-13-01	p. 657

01-sb76.124/jc