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SENATE BILL NO. 118

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor
 on February 3, 2014)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact §§ 6.2-1700, 6.2-1701, 6.2-1706, and 6.2-1707 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.2-1701.2, relating to mortgage loan originators; transitional licensing.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1700, 6.2-1701, 6.2-1706, and 6.2-1707 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.2-1701.2 as follows:

§ 6.2-1700. Definitions.

As used in this chapter:

"Act" means the federal Secure and Fair Enforcement for Mortgage Licensing Act, Title V (§ 1501 et seq.) of the Housing and Economic Recovery Act of 2008, P.L. 110-289.

"Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan in the mortgage industry and communication with the consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

"Covered financial institution" has the same meaning as that term is defined in 12 C.F.R. § 1007.102.

"Dwelling" means a residential structure or mobile home that contains one to four family housing units, or individual units of condominiums or cooperatives.

"Employee" means an individual (i) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and (ii) whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

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

"Licensee" means an individual licensed under this chapter, *including an individual who has been issued a transitional mortgage loan originator license.*

"Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or a registered mortgage loan originator. For the purposes of this definition, clerical or support duties include (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

"Mortgage loan originator" means an individual who (i) takes an application for or offers or negotiates the terms of a residential mortgage loan in which the dwelling is or will be located in the Commonwealth or (ii) represents to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities described in clause (i).

"Nationwide Mortgage Licensing System and Registry" or "Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

"Real estate brokerage activities" means any activity that involves offering or providing real estate brokerage services to the public, including (i) acting as a real estate broker, real estate agent, or real estate salesperson for a buyer, seller, lessor, or lessee of real property; (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (iii) negotiating any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction; (iv) engaging in any activity for which a person is required to be licensed or registered as a real estate broker, real estate agent, or real estate salesperson; and (v) offering to engage in any activity or act in any capacity described in clauses (i) through (iv).

60 "Registered mortgage loan originator" means any individual who (i) takes an application for or offers
61 or negotiates the terms of a residential mortgage loan in which the dwelling is or will be located in the
62 Commonwealth, (ii) is an employee of a covered financial institution, and (iii) is registered with, and
63 maintains a unique identifier through, the Registry.

64 "Residential mortgage loan" means any loan primarily for personal, family, or household use that is
65 secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or
66 residential real estate upon which is constructed or intended to be constructed a dwelling.

67 "Transitional mortgage loan originator license" means a license issued under this chapter to engage
68 in business as a mortgage loan originator for a period of no more than 120 days, during which time the
69 individual may fulfill the pre-licensing education and written test requirements described in §§ 6.2-1708
70 and 6.2-1709 and apply for a mortgage loan originator license.

71 "Unique identifier" means a number or other identifier assigned by protocols established by the
72 Registry that permanently identifies a mortgage loan originator.

73 **§ 6.2-1701. License requirement.**

74 A. ~~No~~ Except as otherwise provided in § 6.2-1701.2, no individual shall engage in the business of a
75 mortgage loan originator unless such individual has first obtained and maintains annually a license under
76 this chapter.

77 B. The following shall be exempt from licensing and other provisions of this chapter:

78 1. Any individual engaged solely as a loan processor or underwriter. Except as otherwise provided in
79 this subsection, an individual acting as an independent contractor may not engage in residential
80 mortgage loan origination activities as a loan processor or underwriter unless such individual has first
81 obtained and maintains annually a mortgage loan originator license;

82 2. Any individual who only performs administrative or clerical tasks on behalf of a mortgage loan
83 originator;

84 3. Any individual who only performs real estate brokerage activities and is licensed or registered in
85 accordance with applicable law, unless the individual is compensated directly or indirectly by the lender,
86 a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker,
87 or other mortgage loan originator;

88 4. Any individual solely involved in extensions of credit relating to timeshare plans, as that term is
89 defined in 11 U.S.C. § 101(53D);

90 5. A registered mortgage loan originator;

91 6. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of
92 an immediate family member of the individual;

93 7. Any individual who acts as a loan originator in providing financing for the sale of that individual's
94 own residence;

95 8. A licensed attorney, provided that the attorney's mortgage loan origination activities are: (i)
96 considered by the Supreme Court of Virginia to be part of the authorized practice of law within the
97 Commonwealth, (ii) carried out within an attorney-client relationship, and (iii) accomplished by the
98 attorney in compliance with all applicable laws, rules, ethics, and standards;

99 9. Any employee of federal, state, or local government, or a housing finance agency, who acts as a
100 mortgage loan originator only pursuant to his official duties of employment. For the purposes of this
101 subdivision, "local government" means any county, city, or town or other local or regional political
102 subdivision; and

103 10. Any employee of a bona fide nonprofit organization, as determined by the Commission in
104 accordance with § 6.2-1701.1, who acts as a mortgage loan originator only (i) pursuant to his official
105 duties of employment and (ii) with respect to residential mortgage loans with terms that are favorable to
106 a borrower.

107 **§ 6.2-1701.2. Transitional mortgage loan originator license.**

108 A. In anticipation of fulfilling the pre-licensing education and written test requirements described in
109 §§ 6.2-1708 and 6.2-1709, an individual may apply for and obtain a transitional mortgage loan
110 originator license pursuant to this section provided that the Commission makes the findings specified in
111 § 6.2-1706 and subsection B of § 6.2-1707. A transitional mortgage loan originator license may be
112 issued by the Commission to:

113 1. An individual who maintains a license to originate mortgage loans under the laws of another
114 state; or

115 2. To the extent permitted under the Act, or any rule, regulation, interpretation, or guideline
116 thereunder, an individual who was a registered mortgage loan originator within two months prior to the
117 date that the individual applied for a transitional mortgage loan originator license.

118 B. An individual shall apply for a transitional mortgage loan originator license by complying with
119 the same requirements as those applicable to individuals who are applying for a mortgage loan
120 originator license, including §§ 6.2-1702, 6.2-1703, and 6.2-1704. However, an individual applying for
121 a transitional mortgage loan originator license shall not be required to comply with the prelicensing

education requirements described in § 6.2-1708 or pass the written test described in § 6.2-1709.

C. Notwithstanding any other provision of this chapter, a transitional mortgage loan originator license shall expire on the earlier of the following:

1. The date upon which the Commission issues or denies a mortgage loan originator license; or

2. One hundred twenty days from the date the transitional mortgage loan originator license was issued.

A transitional mortgage loan originator license shall not be renewed, extended, or reinstated, and an individual who has been issued a transitional mortgage loan originator license shall not subsequently be eligible for any additional transitional mortgage loan originator licenses.

§ 6.2-1706. Qualifications.

Upon the filing and investigation of an application for a license, including an application for a transitional mortgage loan originator license, and compliance by the applicant with all applicable provisions of this chapter, the Commission shall issue and deliver to the applicant the license applied for to engage in business under this chapter if it finds that the financial responsibility, character, and general fitness of the applicant are such as to warrant belief that the licensee will act as a mortgage loan originator efficiently and fairly, in the public interest, and in accordance with law. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial. The Commission shall not base a license denial, in whole or in part, on an applicant's credit score, nor shall it use a credit report as the sole basis for license denial.

§ 6.2-1707. Other conditions for mortgage loan originator licensing.

A. In addition to the findings required by § 6.2-1706, the Commission shall not issue a mortgage loan originator license unless it finds that:

1. The applicant has never had a mortgage loan originator license revoked by any governmental authority;

2. The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court (i) during the seven-year period preceding the application for licensing and registration; or (ii) at any time preceding such date of application if such felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

3. The applicant has completed the pre-licensing education requirement described in § 6.2-1708;

4. The applicant has passed a written test that meets the test requirement described in § 6.2-1709; and

5. The applicant has become registered through, and obtained a unique identifier from, the Registry.

B. In addition to the findings required by § 6.2-1706, the Commission shall not issue a transitional mortgage loan originator license unless it (i) makes the findings set forth in subdivisions A 1, A 2, and A 5 and (ii) finds that the applicant is employed by a person licensed under Chapter 16 (§ 6.2-1600 et seq.).