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SENATE BILL NO. 75

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor
 on January 16, 2012)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact §§ 6.2-1700, 6.2-1701, 6.2-1709, 6.2-1711, 6.2-1715, 6.2-1719, and 6.2-1720 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.2-1701.1, relating to mortgage loan originators.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1700, 6.2-1701, 6.2-1709, 6.2-1711, 6.2-1715, 6.2-1719, and 6.2-1720 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.2-1701.1 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.

"Depository institution" has the same meaning as in § 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.), and includes any credit union.

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

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

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

"Individual loan servicer" means any person who, on behalf of the note holder, collects or receives payments, including payments of principal, interest, escrow amounts, and other amounts due, on obligations due and owing to the note holder pursuant to a residential mortgage loan, or who, when the borrower is in default or in foreseeable likelihood of default, works on behalf of the note holder with the borrower to modify or refinance, either temporarily or permanently, the obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

"Licensee" means an individual licensed under this chapter.

"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 person exempt from licensing under this chapter. For the purposes of this definition, clerical or support duties may 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 takes an application for or offers or negotiates the terms of a residential mortgage loan; as defined in § 1503(8) of the Act, in which the dwelling is or will be located in the Commonwealth. "Mortgage loan originator" does not include (i) any individual who only performs administrative or clerical tasks on behalf of a person licensed or exempt pursuant to Chapter 16 (§ 6.2-1600 et seq.) or on behalf of any individual licensed pursuant to this chapter; (ii) any individual who only performs real estate brokerage activities and is licensed or registered in accordance with applicable law, unless the individual is compensated by the lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; (iii) any individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D); (iv) a registered mortgage loan originator; (v) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; (vi) any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence; (vii) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the

60 attorney's representation of the client, unless the attorney 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
62 loan originator; (viii) any individual acting as an individual loan servicer; or (ix) any individual who is
63 employed by a housing counseling organization certified or approved by the U.S. Department of
64 Housing and Urban Development, assists borrowers who are in default or in foreseeable likelihood of
65 default on a residential mortgage loan by offering or negotiating the terms of such loan, and does not
66 otherwise engage in any activities for which a license is required by this chapter.

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

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

73 "Real estate brokerage activities" means any activity governed by Chapter 21 (~~§ 54.1-2100 et seq.~~) of
74 Title 54.1 that involves offering or providing real estate brokerage services to the public, including (i)
75 acting as a real estate broker, real estate agent, or real estate salesperson for a buyer, seller, lessor, or
76 lessee of real property; (ii) bringing together parties interested in the sale, purchase, lease, rental, or
77 exchange of real property; (iii) negotiating any portion of a contract relating to the sale, purchase,
78 lease, rental, or exchange of real property, other than in connection with providing financing with
79 respect to any such transaction; (iv) engaging in any activity for which a person is required to be
80 licensed or registered as a real estate broker, real estate agent, or real estate salesperson; and (v)
81 offering to engage in any activity or act in any capacity described in clauses (i) through (iv).

82 "Registered mortgage loan originator" means any individual who (i) takes an application for or offers
83 or negotiates the terms of a residential mortgage loan, as defined in § 1503(8) of the Act, in which the
84 dwelling is or will be located in the Commonwealth and is an employee of (a) a depository institution,
85 (b) a subsidiary that is owned and controlled by a depository institution and regulated by a federal
86 banking agency, or (c) an institution regulated by the Farm Credit Administration, and (ii) is registered
87 with, and maintains a unique identifier through, the Registry.

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

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

93 § 6.2-1701. License requirement.

94 ~~On or after July 1, 2010, no~~ A. No individual shall act as engage in the business of a mortgage loan
95 originator, or hold himself out to the general public as a mortgage loan originator, unless such individual
96 has first obtained and maintains annually a license under this chapter. ~~And~~

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

98 1. Any individual engaged solely as a loan processor or underwriter, who does not represent to the
99 public, through advertising or other means of communicating or providing information including the use
100 of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual
101 can or will perform any of the activities of a mortgage loan originator, shall not be required to obtain a
102 mortgage loan originator license. An individual acting as an independent contractor may not engage in
103 residential mortgage loan origination activities as a loan processor or underwriter unless such individual
104 obtains a mortgage loan originator license;

105 2. Any individual who only performs administrative or clerical tasks on behalf of a person licensed
106 or exempt pursuant to Chapter 16 (§ 6.2-1600 et seq.) or on behalf of any individual licensed pursuant
107 to this chapter;

108 3. Any individual who only performs real estate brokerage activities and is licensed or registered in
109 accordance with applicable law, unless the individual is compensated by the lender, a mortgage broker,
110 or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage
111 loan originator;

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

114 5. A registered mortgage loan originator;

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

117 7. Any individual who offers or negotiates terms of a residential mortgage loan secured by a
118 dwelling that serves as the individual's residence;

119 8. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client
120 as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated
121 by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender,

122 mortgage broker, or other mortgage loan originator;

123 9. Any individual acting as an individual loan servicer;

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

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

132 § 6.2-1701.1. Bona fide nonprofit organizations.

133 A. The Commission shall prescribe by regulation (i) the procedures and criteria that it will use to
134 determine whether an organization is a bona fide nonprofit organization and (ii) the information and
135 fees that must be submitted by an organization to the Commission in connection with a request for a
136 determination under this section. In establishing the criteria for a bona fide nonprofit organization, the
137 Commission shall give consideration to the criteria that have been adopted by the Consumer Financial
138 Protection Bureau or any other federal agency with rulemaking authority under the Act.

139 B. The Commission shall, as often as it deems necessary, investigate and periodically examine the
140 business activities, books, and records of any bona fide nonprofit organization insofar as they pertain to
141 the criteria that the Commission has prescribed pursuant to clause (i) of subsection A. In the course of
142 such investigations and examinations, the organization being investigated or examined shall, upon
143 demand of the person making such investigation or examination, afford full access to all books, records,
144 and information that the person making such investigation or examination deems necessary.

145 C. The Commission may, after providing notice and an opportunity for a hearing, revoke its
146 determination that an organization is a bona fide nonprofit organization if it finds that the organization
147 no longer meets the criteria prescribed by the Commission pursuant to clause (i) of subsection A.

148 § 6.2-1709. Testing of mortgage loan originator applicants.

149 A. In order to meet the written test requirement referred to in subdivision 4 of § 6.2-1707, an
150 individual shall pass, in accordance with reasonable standards established under this ~~subsection~~ section, a
151 qualified written test that has been developed by the Registry and administered by a test provider
152 approved by the Registry.

153 B. A written test shall not be a qualified written test for purposes of subsection A unless the test
154 adequately measures the applicant's knowledge and comprehension in appropriate subject areas,
155 including: (i) ethics; (ii) federal law and regulation pertaining to mortgage loan origination; (iii) state
156 law pertaining to mortgage loan origination; and (iv) federal and state law and regulation pertaining to
157 fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

158 C. Nothing in this section shall prohibit a test provider approved by the Registry from providing a
159 test at a location of: (i) the employer of the applicant; (ii) any subsidiary or affiliate of the employer; or
160 (iii) any entity with which the applicant maintains an exclusive arrangement to act as a mortgage loan
161 originator.

162 D. An individual shall not be considered to have passed a qualified written test unless he has
163 correctly answered at least 75 percent of the test questions. An individual may ~~retake~~ take a test three
164 consecutive times with each consecutive taking occurring at least 30 days after the preceding test. After
165 failing three consecutive tests, an individual shall wait at least six months before retaking the test. A
166 licensed mortgage loan originator who fails to maintain a valid license for a period of five years or
167 longer, exclusive of any period during which such individual is a registered mortgage loan originator,
168 shall retake the test *and correctly answer at least 75 percent of the test questions.*

169 E. An applicant who has successfully completed pre-licensing education and testing that is mandated
170 by the Act and approved by the Registry for any state shall be deemed to have completed Virginia's
171 pre-licensing education and testing requirements, other than any limited or separate state testing
172 requirements relating to Virginia law and regulation as described in subsection B.

173 § 6.2-1711. Licenses; places of business; changes.

174 A. Each license shall state fully the name and address of record of the licensee. Each licensee shall
175 be required to display proof of licensing upon request, and to prominently display at any location where
176 he acts as a mortgage loan originator the telephone numbers and Internet addresses for the Registry and
177 the Commission where consumers and other interested parties may confirm the status of his license.
178 Licenses shall not be transferable or assignable, by operation of law or otherwise. ~~No~~ *Except as*
179 *otherwise provided by the Commission, no* licensee shall use any name, in acting as a mortgage loan
180 originator, other than the name set forth on the license issued by the Commission.

181 B. Every licensee shall within 10 days notify the Commissioner, in writing, of any change of
182 residential or business address and provide such other information with respect to any such change as

183 the Commissioner may reasonably require.

184 C. Every license shall remain in force until it expires or has been surrendered, revoked, or
185 suspended. The expiration, surrender, revocation, or suspension of a license shall not affect any
186 preexisting legal right or obligation of the licensee. Licenses In addition:

187 1. Except as otherwise provided by the Commission, licenses shall expire at the end of each calendar
188 year unless renewed by prior payment of the annual license renewal fee. A licensee may request renewal
189 by (i) filing a license renewal application through the Registry, (ii) paying the annual license renewal
190 fee prescribed in § 6.2-1714, (iii) obtaining the continuing education prescribed in § 6.2-1710, and (iv)
191 furnishing such other information as may be required by the Commission;

192 2. The Commission shall renew an individual's license if the Commission finds that the individual
193 has complied with the requirements of this chapter and continues to meet the conditions for initial
194 licensure. If the Commission fails to make the findings required by this subdivision, the Commission
195 shall not renew the individual's license. In determining whether to renew a license, the Commission
196 shall consider whether the licensee has violated state or federal law; and

197 3. Notwithstanding any other provision of this chapter, the Commission may by regulation permit a
198 former licensee to seek license reinstatement after the license expiration date by requesting renewal in
199 accordance with subdivision 1 and paying a reinstatement fee as prescribed by the Commission.

200 § 6.2-1715. Advertising; use of a unique identifier.

201 A. No individual required to be licensed under this chapter shall use or cause to be published any
202 advertisement that:

203 1. Contains any false, misleading, or deceptive statement or representation; or

204 2. Identifies Except as otherwise provided by the Commission, identifies a licensee by any name
205 other than the name set forth on the license issued by the Commission.

206 B. No licensee shall use the unique identifier obtained from the Registry for any purpose other than
207 the purposes of the Act and this chapter.

208 § 6.2-1719. Civil penalties.

209 The Commission may impose a civil penalty not exceeding \$2,500 upon any individual required to
210 be licensed under this chapter who it determines, in proceedings commenced in accordance with the
211 Commission's Rules, has violated any of the provisions of this chapter or any other law or regulation
212 applicable to the licensee's activities. For the purposes of this section, each separate violation shall be
213 subject to the civil penalty herein prescribed, and each day that an unlicensed individual acts as or holds
214 himself out to the general public as, engages in the business of a mortgage loan originator shall
215 constitute a separate violation.

216 § 6.2-1720. Regulations; agreements between Commission and Registry.

217 A. The Commission shall adopt such regulations as it deems appropriate to effect the purposes of
218 this chapter. Before adopting any such regulations, the Commission shall give reasonable notice of their
219 content and shall afford interested parties an opportunity to present evidence and be heard, in accordance
220 with the Commission's Rules.

221 B. The Commission shall, to the extent practicable, include in any written memorandum of
222 understanding or other written agreement between the Commission and the Registry provisions
223 substantially similar to the following:

224 1. Any organization serving as the administrator of the Registry or any officer or employee of any
225 such entity shall implement and maintain an information security program that meets or exceeds federal
226 and state standards pursuant to § 18.2-186.6 and that complies with the regulation guidelines
227 promulgated under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) for safeguarding personal
228 information of mortgage loan originators and applicants;

229 2. The Registry shall not under any circumstances disclose to any third party any information
230 pertaining to any pending or incompletely adjudicated regulatory matters;

231 3. The Registry shall develop, as requested by the Commission, a mortgage loan originator licensing
232 test that may be limited to specific products and services; and

233 4. The Registry shall provide to the Commission summary statistical information by March 31 of
234 each year relating to loan originator examinations taken by applicants for a mortgage loan originator
235 license in the Commonwealth during the preceding calendar year;

236 5C. Except as otherwise provided in ~~§ 1512~~ of the Act, ~~the requirements or this chapter, any~~
237 ~~requirement~~ under any federal or state law regarding the privacy or confidentiality of any information or
238 material provided to the Registry, and any privilege arising under federal or state law, including the
239 rules of any federal or state court, with respect to such information or material, shall continue to apply
240 to such information or material after the information or material has been disclosed to the Registry. Such
241 information and material may be shared with all state and federal regulatory officials with mortgage
242 industry oversight authority without the loss of privilege or the loss of confidentiality protections
243 provided by federal or state law; and. In addition:

244 61. Information or material that is subject to privilege or confidentiality under ~~§ 6.2-101~~ this

245 *subsection* shall not be subject to: (i) disclosure under any federal or state law governing the disclosure
246 to the public of information held by an officer or an agency of the federal government or the
247 Commonwealth; or (ii) subpoena or discovery, or admission into evidence, in any private civil action or
248 administrative process, unless with respect to any privilege held by the Registry with respect to such
249 information or material, the individual to whom such information or material pertains waives, in whole
250 or in part, in the discretion of such individual, that privilege;

251 ~~€~~2. Any provision of the laws of the Commonwealth relating to the disclosure of confidential
252 supervisory information or any information or material described in ~~§ 6.2-101~~ *this subsection* that is
253 inconsistent with ~~such provision~~ *this subsection* shall be superseded by the requirements of this ~~chapter~~
254 *subsection to the extent that such provision provides less confidentiality or a weaker privilege; and*

255 ~~D~~3. This ~~chapter~~ *subsection* shall not apply with respect to the information or material relating to the
256 employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage
257 loan originators that is included in the Registry for access by the public.

258 ~~E~~D. The Commission shall:

259 1. Annually review the proposed budget, fees, and audited financial statements of the Registry;

260 2. Annually, to the extent practicable, report to the House and Senate Committees on Commerce and
261 Labor on the operations of the Registry, including compliance with its established protocols for securing
262 and safeguarding personal information in the Registry; ~~and~~

263 3. To the extent practicable, prepare, publicly announce, and publish a report, by no later than ~~May 1~~
264 *July 1* of each year, that summarizes statistical test results and demographic information to be prepared
265 by the Registry or its test administrator; *and*

266 4. *Report violations of this chapter, any enforcement actions thereunder, and other relevant*
267 *information to the Registry on a regular basis.*