

# Senate Bill 249

SB249

108191-4

By Senators Denton, Little (T), Pittman, Bedford, Barron, Figures, Benefield, Means, and Penn

RFD: Banking and Insurance

First Read: 03-FEB-09 SB249

ENROLLED, An Act,

To provide for the licensing and regulation of mortgage loan originators; to provide for licensure exemptions; and to provide a civil penalty for violations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This Act may be cited as the "Alabama Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or Alabama S.A.F.E. Mortgage Licensing Act of 2009."

Section 2. The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon Alabama's consumers, Alabama's economy, the neighborhoods and communities of Alabama, and the housing and real estate industry. The Legislature finds that accessibility to mortgage credit is vital to the state's citizens. The Legislature also finds that it is essential for the protection of the citizens of Alabama and the stability of Alabama's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. Therefore the Legislature establishes within this Act:

- (a) SYSTEM OF SUPERVISION AND ENFORCEMENT-An effective system of supervision and enforcement of the mortgage lending industry, including:
  - (i) The authority to issue licenses to conduct business under this Act, including the authority to write rules or regulations or adopt procedures necessary to the licensing of persons covered under this Act.
  - (ii) The authority to deny, suspend, condition or revoke licenses issued under this Act.
  - (iii) The authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this Act, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from office or employment.
- (b) BROAD ADMINISTRATIVE AUTHORITY-That the Supervisor shall have the broad administrative authority to administer, interpret and enforce this Act, and promulgate rules or regulations implementing this Act, in order to carry out the intentions of the Legislature.

Section 3. For purposes of this Act, the following definitions shall apply:

- (1) DEPOSITORY INSTITUTION-The term "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.
- (2) FEDERAL BANKING AGENCIES-The term "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.
- (3) IMMEDIATE FAMILY MEMBER-The term "immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and

adoptive relationships.

- (4) INDIVIDUAL-The term "individual" means a natural person.
- (5) LOAN PROCESSOR OR UNDERWRITER-
- (a) IN GENERAL-The term "loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under the Alabama Consumer Credit Act or Mortgage Brokers Licensing Act.
- (b) CLERICAL OR SUPPORT DUTIES-For purposes of subsection (a), the term "clerical or support duties" may include subsequent to the receipt of an application-
- (i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
- (ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a 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.
- (c) REPRESENTATIONS TO THE PUBLIC-An individual engaging solely in loan processor or underwriter activities, shall not represent 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 of a mortgage loan originator.
- (6) LOSS MITIGATION SPECIALIST-The term "loss mitigation specialist" means an individual employed by a lender or servicer who negotiates or renegotiates the terms of an existing loan, or assists in refinancing an existing loan when a borrower is in default, or in reasonably foreseeable likelihood of default.
- (7) MORTGAGE LOAN ORIGINATOR-
- (a) IN GENERAL-The term "mortgage loan originator" -
- (i) Means an individual who for compensation or gain or in the expectation of compensation or gain-
- (A) Takes a residential mortgage loan application; or
- (B) Offers or negotiates terms of a residential mortgage loan;
- (ii) Does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in Section 4(3);
- (iii) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Alabama law, unless the person or entity 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; and
- (iv) Does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in [section 101\(53D\) of title 11](#), United States Code.
- (b) REAL ESTATE BROKERAGE ACTIVITY DEFINED-For purposes of this Act the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including-
- (i) Acting as a real estate agent or real estate broker 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, on behalf of any party, 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 engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
  - (v) Offering to engage in any activity, or act in any capacity, described in subsections (i), (ii), (iii), or (iv) of this section.
- (8) **NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY**-The term "Nationwide Mortgage Licensing System and 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 licensed mortgage loan originators.
- (9) **NONTRADITIONAL MORTGAGE PRODUCT**-The term "nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.
- (10) **PERSON**-The term "person" means a natural person, corporation, company, limited liability company, partnership, or association.
- (11) **REGISTERED MORTGAGE LOAN ORIGINATOR**-The term "registered mortgage loan originator" means any individual who-
- (a) Meets the definition of mortgage loan originator and is an employee of-
    - (i) A depository institution;
    - (ii) A subsidiary that is-
      - (A) Owned and controlled by a depository institution; and
      - (B) Regulated by a Federal banking agency; or
    - (iii) An institution regulated by the Farm Credit Administration; and
  - (b) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, or if prior to the Federal Banking Agencies establishing a registration system, would be subject to registration under the registration system when established by the Federal Banking Agencies and then would maintain a unique identifier.
- (12) **RESIDENTIAL MORTGAGE LOAN**-The term "residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling.
- (13) **RESIDENTIAL REAL ESTATE**-The term "residential real estate" means any real property located in Alabama, upon which is constructed or intended to be constructed a dwelling.
- (14) **SUPERVISOR**-The Supervisor of the Bureau of Loans of the State Banking Department.
- (15) **UNIQUE IDENTIFIER**-The term "unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

#### Section 4. License and Registration Required

- (1) **IN GENERAL**-An individual, unless specifically exempted from this Act under subsection (2) 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 Act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.
- (2) **EXEMPTION FROM THIS ACT**-The following are exempt from and are not subject to this Act:
- (a) Registered Mortgage Loan Originators, loan processors, loss mitigation specialists, and other employees when acting for an entity described in Section 3(11)(a)(i),(ii) or (iii) are exempt from this Act.
  - (b) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

- (c) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
  - (d) 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.
  - (e) The provisions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 shall apply to the activities of retail sellers of manufactured or modular homes to the extent determined by the United States Department of Housing and Urban Development through written guidelines, rules, regulations, or interpretive letters.
  - (f) Notwithstanding the licensing requirements of this section, an individual acting exclusively as a loss mitigation specialist engaging in loss mitigation efforts with respect to existing mortgage transactions is not required to meet the education, testing, background, and licensing standards of this act until July 1, 2011, unless denied by the United States Department of Housing and Urban Development.
- (3) INDEPENDENT CONTRACTOR LOAN PROCESSORS OR UNDERWRITERS-A 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 Section 4(1). 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.
  - (4) AUTHORITY TO ESTABLISH LICENSING RULES, REGULATIONS OR INTERIM PROCEDURES AND ACCEPT EARLY APPLICATIONS-For the purposes of implementing an orderly and efficient licensing process the Supervisor may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications.

#### Section 5. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE-

- (1) APPLICATION FORM-Applicants for a license shall apply in a form as prescribed by the Supervisor. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the Supervisor and may be changed or updated as necessary by the Supervisor in order to carry out the purposes of this Act.
- (2) LICENSE FEE-Each application shall be filed with an initial license fee of seventy-five dollars (\$75.00). This license fee shall be in addition to the fees required to apply through the Nationwide Mortgage Licensing System and Registry.
- (3) SUPERVISOR MAY ESTABLISH RELATIONSHIPS OR CONTRACTS-In order to fulfill the purposes of this Act, the Supervisor is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Act.
- (4) WAIVE OR MODIFY REQUIREMENTS-For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the Supervisor is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.
- (5) BACKGROUND CHECKS-Notwithstanding any existing state law to the contrary, in connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including-
  - (a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and
  - (b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Supervisor to obtain-

- (i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
  - (ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.
- (6) AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING CRIMINAL INFORMATION-For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (4)(a) and (b)(ii) of this section the Supervisor may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.
- (7) AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING NON-CRIMINAL INFORMATION-For the purposes of this section and in order to reduce the points of contact which the Supervisor may have to maintain for purposes of subsection (4)(b)(i) and (ii) of this section the Supervisor may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Supervisor.

Section 6. ISSUANCE OF LICENSE-The Supervisor shall not issue a mortgage loan originator license unless the Supervisor makes at a minimum the following findings:

- (1) NO LICENSE REVOCATION-The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.
- (2) NO FELONY CONVICTION-The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court-
- (a) During the 7-year period preceding the date of the application for licensing and registration; or
  - (b) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;
  - (c) Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.
- (3) CHARACTER AND FITNESS-The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act. The Supervisor shall not base a license denial, in whole or in part, on an applicant's credit score, nor shall the Supervisor use a credit report as the sole basis for license denial.
- (a) For purposes of this subsection a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but not be limited to:
    - (i) Current outstanding judgments, except judgments solely as a result of medical expenses;
    - (ii) Current outstanding tax liens or other government liens and filings;
    - (iii) Foreclosures within the past three years;
    - (iv) A pattern of seriously delinquent accounts within the past three years.
- (4) PRE-LICENSING EDUCATION-The applicant has completed the pre-licensing education requirement described in subsection Section 7.
- (5) WRITTEN TEST-The applicant has passed a written test that meets the test requirement described in subsection Section 8.
- (6) NET WORTH, SURETY BOND OR STATE FUND REQUIREMENT-The applicant has met the surety bond requirement as required pursuant to Section 14.

Section 7. PRE-LICENSING EDUCATION OF LOAN ORIGINATORS-

- (1) MINIMUM EDUCATIONAL REQUIREMENTS-In order to meet the pre-licensing education requirement referred to in subsection Section 6(4) a person shall complete at least 20 hours of education approved in accordance with subsection (2) of this section, which shall include at least-
  - (a) 3 hours of Federal law and regulations;
  - (b) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
  - (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- (2) APPROVED EDUCATIONAL COURSES-For purposes of subsection (1) of this section, pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.
- (3) APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL COURSES-Nothing in this section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.
- (4) VENUE OF EDUCATION-Pre-licensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.
- (5) RECIPROCITY OF EDUCATION-The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsections (1)(a), (b) and
- (6) of this section for any state shall be accepted as credit towards completion of pre-licensing education requirements in Alabama.

#### Section 8. TESTING OF LOAN ORIGINATORS-

- (1) IN GENERAL-In order to meet the written test requirement referred to in Section 6(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.
- (2) QUALIFIED TEST-A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including-
  - (a) Ethics;
  - (b) Federal law and regulation pertaining to mortgage origination;
  - (c) State law and regulation pertaining to mortgage origination;
  - (d) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.
- (3) TESTING LOCATION-Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.
- (4) MINIMUM COMPETENCE-
  - (a) PASSING SCORE-An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.
  - (b) INITIAL RETESTS-An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.
  - (c) SUBSEQUENT RETESTS-After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

- (d) RETEST AFTER LAPSE OF LICENSE-A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

#### Section 9. STANDARDS FOR LICENSE RENEWAL-

- (1) IN GENERAL-The minimum standards for license renewal for mortgage loan originators shall include the following:
  - (a) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 6(1)-(6).
  - (b) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 10.
  - (c) The mortgage loan originator has paid all required fees for renewal of the license. The fee related to the renewal of the license shall be seventy-five dollars (\$75.00). This license renewal fee shall be in addition to the fees required to renew through the Nationwide Mortgage Licensing System and Registry.
- (2) FAILURE TO SATISFY MINIMUM STANDARDS OF LICENSE RENEWAL-The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The Supervisor may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

#### Section 10. CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS-

- (1) IN GENERAL-In order to meet the annual continuing education requirements referred to in Section 9(1)(b), a licensed mortgage loan originator shall complete at least 8 hours of education approved in accordance with subsection (2) of this section, which shall include at least-
  - (a) 3 hours of Federal law and regulations;
  - (b) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
  - (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- (2) APPROVED EDUCATIONAL COURSES-For purposes of subsection (1) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.
- (3) APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL COURSES-Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.
- (4) VENUE OF EDUCATION-Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.
- (5) CALCULATION OF CONTINUING EDUCATION CREDITS-A licensed mortgage loan originator-
  - (a) Except for Section 9(2) and subsection (9) of this section may only receive credit for a continuing education course in the year in which the course is taken; and
  - (b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.
- (6) INSTRUCTOR CREDIT-A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.
- (7) RECIPROCITY OF EDUCATION-A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsections (1)(a), (b) and (c) of this section for any state shall be accepted as credit towards completion of continuing education requirements in Alabama.

- (8) LAPSE IN LICENSE-A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.
- (9) MAKE UP OF CONTINUING EDUCATION-A person meeting the requirements of Section 9(1)(a) and (c) may make up any deficiency in continuing education as established by rule or regulation of the Supervisor.

Section 11. AUTHORITY TO REQUIRE LICENSE-In addition to any other duties imposed upon the Supervisor by law, the Supervisor shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the Supervisor is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Supervisor may establish by rule/regulation or order requirements as necessary, including but not limited to:

- (1) BACKGROUND CHECKS-Background checks for:
  - (a) Criminal history through fingerprint or other databases;
  - (b) Civil or administrative records;
  - (c) Credit history; or
  - (d) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.
- (2) FEES-The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;
- (3) SETTING DATES-The setting or resetting as necessary of renewal or reporting dates; and
- (4) OTHER-Requirements for amending or surrendering a license or any other such activities as the Supervisor deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

Section 12. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS-The Supervisor shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry.

Section 13. ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES-

- (1) In order to ensure the effective supervision and enforcement of this Act the Supervisor may:
  - (a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this Act, rules or regulations issued under this Act or order or directive entered under this Act, or for failure to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this act.
  - (b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of Section 6 or Section 9, or withholds information or makes a material misstatement in an application for a license or renewal of a license.
  - (c) Order restitution against persons subject to this Act for violations of this Act.
  - (d) Impose fines on persons subject to this Act pursuant to subsections (2), (3) and (4) of this section.
  - (e) Issue orders or directives under this Act as follows:
    - (i) Order or direct persons subject to this Act to cease and desist from conducting business, including immediate temporary orders to cease and desist.
    - (ii) Order or direct persons subject to this Act to cease any harmful activities or violations of this Act, including immediate temporary orders to cease and desist.

- (iii) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under Section 4(5) if the Supervisor determines that such license was erroneously granted or the licensee is currently in violation of this Act;
  - (iv) Order or direct such other affirmative action as the Supervisor deems necessary.
- (2) The Supervisor may impose a civil penalty on a mortgage loan originator or person subject to this Act, if the Supervisor finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this Act has violated or failed to comply with any requirement of this Act or any regulation prescribed by the Supervisor under this Act or order issued under authority of this Act.
- (3) The maximum amount of penalty for each act or omission described in subsection (2) of this section shall be \$25,000.
- (4) Each violation or failure to comply with any directive or order of the Supervisor is a separate and distinct violation or failure.
- (5) A violation of this act or any order, rule, regulation, or procedure does not affect the obligation of a borrower or other person under the terms of a mortgage loan or the enforceability of mortgage loan documents. No private cause of action is created by or exists under this act.

#### Section 14. SURETY BOND REQUIRED-

- (1) **COVERAGE, FORM AND REGULATIONS**-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 or exclusive agent of a person subject to the Alabama Consumer Credit Act or Mortgage Brokers Licensing Act, the surety bond of such person subject to the Alabama Consumer Credit Act or Mortgage Brokers Licensing Act can be used in lieu of the mortgage loan originator's surety bond requirement.
  - (a) The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (2) of this section.
  - (b) The surety bond shall be in a form as prescribed by the Supervisor.
  - (c) The Supervisor may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this Act.
- (2) **PENAL SUM OF SURETY BOND**-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 Supervisor.
- (3) **ACTION ON BOND**-When an action is commenced on a licensee's bond the Supervisor may require the filing of a new bond.
- (4) **NEW BOND**-Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

#### Section 15. CONFIDENTIALITY-In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing-

- (1) **PROTECTIONS**-Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any Federal law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal or State law.
- (2) **AGREEMENTS AND SHARING ARRANGEMENTS**-For these purposes, the Supervisor is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the Supervisor.

- (3) NONAPPLICABILITY OF CERTAIN REQUIREMENTS-Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to-
  - (a) Disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or
  - (b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.
- (4) COORDINATION WITH STATE LAW-Existing Alabama law relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.
- (5) PUBLIC ACCESS TO INFORMATION-This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Section 16. INVESTIGATION AND EXAMINATION AUTHORITY-In addition to any authority allowed under this Act the Supervisor shall have the authority to conduct investigations and examinations as follows:

- (1) AUTHORITY TO ACCESS INFORMATION-For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this Act, the Supervisor shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including but not limited to:
  - (a) Criminal, civil and administrative history information, including nonconviction data; and
  - (b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
  - (c) Any other documents, information or evidence the Supervisor deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.
- (2) INVESTIGATION, EXAMINATION, AND SUBPOENA AUTHORITY-For the purposes of investigating violations or complaints arising under this Act, or for the purposes of examination, the Supervisor may review, investigate, or examine any licensee, individual or person subject to this Act, as often as necessary in order to carry out the purposes of this Act. The Supervisor may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Supervisor deems relevant to the inquiry.
- (3) AVAILABILITY OF BOOKS AND RECORDS-Each licensee, individual or person subject to this Act shall make available to the Supervisor upon request the books and records relating to the operations of such licensee, individual or person subject to this Act. The Supervisor shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this Act concerning their business.
- (4) REPORTS AND OTHER INFORMATION AS DIRECTED-Each licensee, individual or person subject to this Act shall make or compile reports or prepare other information as directed by the Supervisor in order to carry out the purposes of this section including but not limited to:
  - (a) Accounting compilations;
  - (b) Information lists and data concerning loan transactions in a format prescribed by the Supervisor; or
  - (c) Such other information deemed necessary to carry out the purposes of this section.

- (5) CONTROL ACCESS TO RECORDS-In making any examination or investigation authorized by this Act, the Supervisor may control access to any documents and records of the licensee or person under examination or investigation. The Supervisor may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Supervisor. Unless the Supervisor has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Act, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.
- (6) ADDITIONAL AUTHORITY-In order to carry out the purposes of this section, the Supervisor may:
- (a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
  - (b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;
  - (c) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this Act;
  - (d) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
  - (e) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the Supervisor.
- (7) EFFECT OF AUTHORITY-The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this Act acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.
- (8) WITHHOLD RECORDS-No licensee, individual or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate,
- destroy, or secrete any books, records, computer records, or other information.

Section 17. PROHIBITED ACTS AND PRACTICES-It is a violation of this Act for a person or individual subject to this Act to:

- (1) Obtain property by intentional fraud or intentional misrepresentation;
- (2) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Act may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (3) Conduct any business covered by this Act without holding a valid license if required under this Act;
- (4) Fail to make disclosures as required by this Act;
- (5) Fail to comply with this Act or rules or regulations promulgated under this Act;
- (6) Collect, charge, or attempt to collect or charge any fee prohibited by this Act; or
- (7) Fail to account for monies belonging to a party to a residential mortgage loan transaction, as required by law or regulation.

Section 18. MORTGAGE CALL REPORTS-Each person employing a Mortgage Loan Originator licensed under this act shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

Section 19. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY-Notwithstanding state privacy law the Supervisor is required to report regularly violations of this act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in Section 15.

Section 20. UNIQUE IDENTIFIER SHOWN-The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation or order of the Supervisor.

Section 21. If any provisions of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 22. The effective date of this act shall be June 1, 2009; however, in order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for licensure requirements of this act shall be June 1, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB249

Senate 02-APR-09

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee  
Secretary

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House of Representative

Passed: 14-MAY-09

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By: Senator Denton