

1 **LICENSING MORTGAGE LOAN OFFICERS**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Brent D. Parker**

5 **This act modifies the Utah Residential Mortgage Practices Act to require licensing,**
6 **prelicensing education, prelicensing examinations, and continuing education of persons**
7 **engaging in the business of residential mortgage loans, and to modify other licensing and**
8 **bonding requirements. The act modifies the definitions of a residential mortgage loan**
9 **and the business of residential mortgage loans. The act modifies the membership of the**
10 **Residential Mortgage Regulatory Commission, and applies the Utah Residential**
11 **Mortgage Practices Act to depository institutions engaging in the business of residential**
12 **mortgage loans. The act prohibits persons from acting in certain multiple capacities with**
13 **respect to a residential mortgage loan. The act provides criminal penalties and rescission**
14 **provisions in the case of a violation of the chapter. The act makes technical changes.**
15 **This act takes effect January 1, 2004.**

16 This act affects sections of Utah Code Annotated 1953 as follows:

17 AMENDS:

- 18 **61-2c-102**, as last amended by Chapter 204, Laws of Utah 2002
- 19 **61-2c-103**, as last amended by Chapter 204, Laws of Utah 2002
- 20 **61-2c-104**, as last amended by Chapter 204, Laws of Utah 2002
- 21 **61-2c-105**, as last amended by Chapters 159 and 204, Laws of Utah 2002
- 22 **61-2c-106**, as last amended by Chapter 204, Laws of Utah 2002
- 23 **61-2c-201**, as last amended by Chapter 204, Laws of Utah 2002
- 24 **61-2c-202**, as last amended by Chapter 204, Laws of Utah 2002
- 25 **61-2c-203**, as last amended by Chapter 204, Laws of Utah 2002
- 26 **61-2c-204**, as last amended by Chapter 204, Laws of Utah 2002
- 27 **61-2c-205**, as last amended by Chapter 204, Laws of Utah 2002



28 **61-2c-301**, as last amended by Chapter 204, Laws of Utah 2002

29 **61-2c-302**, as last amended by Chapter 204, Laws of Utah 2002

30 **61-2c-401**, as last amended by Chapter 204, Laws of Utah 2002

31 **61-2c-402**, as last amended by Chapter 204, Laws of Utah 2002

32 ENACTS:

33 **61-2c-404**, Utah Code Annotated 1953

34 **61-2c-405**, Utah Code Annotated 1953

35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **61-2c-102** is amended to read:

37 **61-2c-102. Definitions.**

38 As used in this chapter:

39 (1) "Affiliate" means an individual or an entity that directly, or indirectly through one
40 or more intermediaries, controls or is controlled by, or is under common control with, a
41 specified individual or entity.

42 (2) "Applicant" means an individual or entity applying for [~~registration~~] a license
43 under this chapter.

44 (3) (a) "Business of residential mortgage loans" means for compensation to:

45 (i) make or originate a residential mortgage loan;

46 (ii) directly or indirectly solicit, [~~process,~~] place, or negotiate a residential mortgage
47 loan for another; or

48 (iii) render services related to the origination[~~, processing,~~] or funding of a residential
49 mortgage loan including:

50 (A) taking applications; and

51 [~~(B) obtaining verifications and appraisals; and~~]

52 [(~~C~~)] (B) communicating with the borrower and lender.

53 (b) "Business of residential mortgage loans" does not include the performance of
54 clerical functions such as:

55 (i) gathering information related to a residential mortgage loan on behalf of the
56 prospective borrower or a person [~~registered~~] licensed under this chapter; or

57 (ii) requesting or gathering information, word processing, sending correspondence, or
58 assembling files by an individual who works under the instruction of a person [~~registered~~]

59 licensed under this chapter.

60 (4) "Closed-end" means a loan with a fixed amount borrowed and which does not
61 permit additional borrowing secured by the same collateral.

62 (5) "Commission" means the Residential Mortgage Regulatory Commission created in
63 Section 61-2c-104.

64 (6) "Compensation" means anything of economic value that is paid, loaned, granted,
65 given, donated, or transferred to an individual or entity for or in consideration of:

66 (a) services;

67 (b) personal or real property; or

68 (c) other thing of value.

69 (7) "Control" means the power, directly or indirectly, to:

70 (a) direct or exercise a controlling influence over:

71 (i) the management or policies of an entity; or

72 (ii) the election of a majority of the directors, officers, managers, or managing partners
73 of an entity;

74 (b) vote 20% or more of any class of voting securities of an entity by an individual; or

75 (c) vote more than 5% of any class of voting securities of an entity by another entity.

76 (8) "Control person" means any individual or entity which directly manages or controls
77 another entity's transaction of the business of residential mortgage loans secured by Utah
78 dwellings.

79 (9) "Depository institution" is as defined in Section 7-1-103.

80 (10) "Director" means the director of the division.

81 (11) "Division" means the Division of Real Estate.

82 (12) "Dwelling" means a residential structure attached to real property that contains
83 one to four units including any of the following if used as a residence:

84 (a) a condominium unit;

85 (b) a cooperative unit;

86 (c) a manufactured home; or

87 (d) a house.

88 (13) "Entity" means any corporation, limited liability company, partnership, company,
89 association, joint venture, business trust, trust, or other organization.

90 (14) "Executive director" means the executive director of the Department of
91 Commerce.

92 [~~(16)~~] (15) [~~"Registrant"~~] "Licensee" means an individual or entity [~~registered~~] licensed
93 with the division under this chapter.

94 [~~(15)~~] (16) "Record" means information that is:

95 (a) prepared, owned, received, or retained by an individual or entity; and

96 (b) (i) inscribed on a tangible medium; or

97 (ii) (A) stored in an electronic or other medium; and

98 (B) retrievable in perceivable form.

99 (17) "Residential mortgage loan" means:

100 (a) a closed-end, first mortgage loan or extension of credit, if:

101 [~~(a)~~] (i) the loan or extension of credit is secured by a:

102 [~~(i)~~] (A) mortgage;

103 [~~(ii)~~] (B) deed of trust; or

104 [~~(iii)~~] (C) lien interest; and

105 [~~(b)~~] (ii) the mortgage, deed of trust, or lien interest described in Subsection (17)(a):

106 [~~(i)~~] (A) is on a dwelling located in the state; and

107 [~~(ii)~~] (B) created with the consent of the owner of the residential real property[-]; or

108 (b) an open-end extension of credit if the extension of credit:

109 (i) is secured by a dwelling located in the state; and

110 (ii) exceeds 40% of the fair market value of the dwelling securing the loan.

111 (18) "State" means:

112 (a) a state, territory, or possession of the United States;

113 (b) the District of Columbia; or

114 (c) the Commonwealth of Puerto Rico.

115 Section 2. Section **61-2c-103** is amended to read:

116 **61-2c-103. Powers and duties of the division.**

117 (1) The division shall administer this chapter.

118 (2) In addition to any power or duty expressly provided in this chapter, the division

119 may:

120 (a) receive and act on complaints including:

- 121 (i) taking action designed to obtain voluntary compliance with this chapter; or
122 (ii) commencing administrative or judicial proceedings on the division's own initiative;
123 (b) establish programs for the education of consumers with respect to residential
124 mortgage loans;
- 125 (c) (i) make studies appropriate to effectuate the purposes and policies of this chapter;
126 and
127 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
128 public; and
129 (d) employ any necessary hearing examiners, investigators, clerks, and other employees
130 and agents.
- 131 (3) The division shall make rules for the administration of this chapter in accordance
132 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:
- 133 (a) [~~registration~~] licensure procedures for individuals and entities required by this
134 chapter to [~~register~~] obtain a license with the division;
- 135 (b) proper handling of funds received by [~~registrants~~] licensees;
- 136 (c) record-keeping requirements by [~~registrants; and~~] licensees; and
- 137 (d) standards of conduct for [~~registrants.~~] licensees.
- 138 (4) (a) The division shall make available to the public a list of the names and addresses
139 of all [~~registrants~~] licensees.
- 140 (b) The division may charge a fee established by the division in accordance with
141 Section 63-38-3.2 for obtaining the list described in Subsection (4)(a).
- 142 Section 3. Section **61-2c-104** is amended to read:
- 143 **61-2c-104. Residential Mortgage Regulatory Commission.**
- 144 (1) There is created within the division the Residential Mortgage Regulatory
145 Commission consisting of:
- 146 (a) the following members appointed by the executive director with the approval of the
147 governor:
- 148 (i) [~~two~~] three members having at least three years of experience in transacting the
149 business of residential mortgage loans, two of whom transact the business of residential
150 mortgage loans on behalf of a regulated financial institution whose deposits are insured by a
151 federal deposit insurer; and

152 (ii) [~~two members~~] one member from the general public; and

153 (b) the commissioner of the Department of Financial Institutions or the commissioner's
154 designee.

155 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint
156 each new member or reappointed member subject to appointment by the executive director to a
157 four-year term ending June 30.

158 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
159 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
160 of commission members are staggered so that approximately half of the commission is
161 appointed every two years.

162 (c) If a vacancy occurs in the membership of the commission for any reason, the
163 replacement shall be appointed for the unexpired term.

164 (3) Members of the commission shall annually select one member to serve as chair.

165 (4) (a) The commission shall meet at least quarterly.

166 (b) The director may call a meeting in addition to the meetings required by Subsection
167 (4)(a):

168 (i) at the discretion of the director;

169 (ii) at the request of the chair of the commission; or

170 (iii) at the written request of three or more commission members.

171 (5) (a) Three members of the commission constitute a quorum for the transaction of
172 business.

173 (b) The action of a majority of a quorum present is an action of the commission.

174 (6) (a) (i) Members who are not government employees shall receive no compensation
175 or benefits for their services, but may receive per diem and expenses incurred in the
176 performance of the member's official duties at the rates established by the Division of Finance
177 under Sections 63A-3-106 and 63A-3-107.

178 (ii) Members who are not government employees may decline to receive per diem and
179 expenses for their service.

180 (b) (i) State government officer and employee members who do not receive salary, per
181 diem, or expenses from their agency for their service may receive per diem and expenses
182 incurred in the performance of their official duties from the commission at the rates established

183 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

184 (ii) State government officer and employee members may decline to receive per diem
185 and expenses for their service.

186 (7) The commission shall:

187 (a) concur in the ~~[registration]~~ licensure or denial of ~~[registration]~~ licensure of
188 individuals and entities under this chapter in accordance with Part 2, ~~[Registration]~~ Licensure;

189 (b) take disciplinary action with the concurrence of the director in accordance with Part
190 4, Enforcement; ~~[and]~~

191 (c) advise the division concerning matters related to the administration and
192 enforcement of this chapter~~[-]~~; and

193 (d) determine the requirements for:

194 (i) the prelicensing course required under Section 61-2c-202;

195 (ii) the examination required under Section 61-2c-202, covering at least:

196 (A) the fundamentals of the English language;

197 (B) arithmetic;

198 (C) the provisions of this chapter;

199 (D) rules adopted by the division;

200 (E) basic residential mortgage principles and practices; and

201 (F) any other aspect of Utah law the commission determines is appropriate; and

202 (iii) the continuing education requirements under Section 61-2c-205, including:

203 (A) the appropriate number of hours of required continuing education; and

204 (B) the subject matter of courses the division may accept for continuing education
205 purposes.

206 (8) The commission may appoint a committee to make recommendations to the
207 commission concerning approval of continuing education courses.

208 Section 4. Section **61-2c-105** is amended to read:

209 **61-2c-105. Scope of chapter.**

210 (1) (a) This chapter applies to a closed-end residential mortgage loan secured by a first
211 lien or equivalent security interest on a dwelling.

212 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer
213 Credit Code.

214 (2) The following are exempt from this chapter:

215 (a) the federal government;

216 (b) a state;

217 (c) a political subdivision of a state;

218 (d) an agency of or entity created by a governmental entity described in Subsections

219 (2)(a) through (c) including:

220 (i) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing

221 Corporation Act;

222 (ii) the Federal National Mortgage Corporation;

223 (iii) the Federal Home Loan Mortgage Corporation;

224 (iv) the Federal Deposit Insurance Corporation;

225 (v) the Resolution Trust Corporation;

226 (vi) the Government National Mortgage Association;

227 (vii) the Federal Housing Administration;

228 (viii) the National Credit Union Administration;

229 (ix) the Farmers Home Administration; and

230 (x) the Department of Veterans Affairs;

231 ~~[(e) a depository institution;]~~

232 ~~[(f) an affiliate of a depository institution;]~~

233 ~~[(g)]~~ (e) an employee or agent of an entity described in Subsections (2)(a) through ~~[(f)]~~

234 (d) when that person acts on behalf of the entity described in Subsections (2)(a) through ~~[(f)]~~

235 (d);

236 ~~[(h)]~~ (f) an individual or entity:

237 (i) that makes a loan:

238 (A) secured by an interest in real property;

239 (B) with the individual's or the entity's own money; and

240 (C) for the individual's or entity's own investment; and

241 (ii) that does not engage in the business of making loans secured by an interest in real

242 property;

243 ~~[(i)]~~ (g) an individual or entity who receives a mortgage, deed of trust, or lien interest

244 on real property if the individual or entity:

245 (i) is the seller of real property; and
246 (ii) receives the mortgage, deed of trust, or lien interest on real property as security for
247 a separate money obligation;

248 ~~(j)~~ (h) an individual or entity who receives a mortgage, deed of trust, or lien interest
249 on real property if:

250 (i) the individual or entity receives the mortgage, deed of trust, or lien interest as
251 security for an obligation payable on an installment or deferred payment basis;

252 (ii) the obligation described in Subsection (2)~~(j)~~(h)(i) arises from an individual or
253 entity providing materials or services used in the improvement of the real property that is the
254 subject of the mortgage, deed of trust, or lien interest; and

255 (iii) the mortgage, deed of trust, or lien interest was created without the consent of the
256 owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;

257 ~~(k)~~ (i) a nonprofit corporation that:

258 (i) is exempt from paying federal income taxes;

259 (ii) is certified by the United States Small Business Administration as a small business
260 investment company;

261 (iii) is organized to promote economic development in this state; and

262 (iv) has as its primary activity providing financing for business expansion;

263 ~~(l)~~ (j) a court appointed fiduciary; or

264 ~~(m)~~ (k) an attorney admitted to practice law in this state:

265 (i) if the attorney is not principally engaged in the business of negotiating residential
266 mortgage loans; and

267 (ii) when the attorney renders services in the course of the attorney's practice as an
268 attorney.

269 (3) (a) Notwithstanding Subsection (2)~~(m)~~(k), an attorney exempt from this chapter
270 may not engage in conduct described in Section 61-2c-301 when transacting business of
271 residential mortgage loans.

272 (b) If an attorney exempt from this chapter violates Subsection (3)(a), the attorney:

273 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

274 (ii) is subject to disciplinary action generally applicable to an attorney admitted to
275 practice law in this state.

276 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
277 in violation of Subsection (3)(a), the division shall forward the complaint to the Utah State Bar
278 for disciplinary action.

279 Section 5. Section **61-2c-106** is amended to read:

280 **61-2c-106. Addresses provided the division.**

281 (1) In providing an address to the division under this chapter, a physical location or
282 street address shall be provided.

283 (2) An individual or entity [~~registered~~] licensed under this chapter will be considered to
284 have received any notification that is mailed to the last address furnished to the division by the
285 individual, or by a control person of the entity, [~~registered~~] licensed under this chapter.

286 Section 6. Section **61-2c-201** is amended to read:

287 **Part 2. Licensure**

288 **61-2c-201. Licensure required of individuals and entities engaged in the business**
289 **of residential mortgage loans.**

290 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity
291 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,
292 without [~~registering~~] obtaining a license under this chapter.

293 (2) For purposes of this chapter, an individual or entity transacts business in this state
294 if:

295 (a) (i) the individual or entity engages in an act that constitutes the business of
296 residential mortgage loans; and

297 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;
298 and

299 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is
300 located in this state; or

301 (b) a representation is made by the individual or entity that the individual or entity
302 transacts the business of residential mortgage loans in this state.

303 (3) Unless otherwise exempted under this chapter, [~~registration~~] licensure under this
304 chapter is required of both:

305 (a) the individual who directly transacts the business of residential mortgage loans; and

306 (b) if the individual transacts business as an employee or agent of an entity or

307 individual, the entity or individual for whom the employee or agent transacts the business of
308 residential mortgage loans.

309 Section 7. Section **61-2c-202** is amended to read:

310 **61-2c-202. Licensure procedures.**

311 (1) To apply for [~~registration~~] licensure under this chapter an individual or entity shall:

312 (a) submit to the division a [~~registration~~] licensure statement that:

313 (i) lists any name under which the individual or entity will transact business in this
314 state;

315 (ii) lists the address of the principal business location of the applicant;

316 (iii) if the applicant is an entity, lists the control persons of the applicant;

317 (iv) demonstrates to the satisfaction of the division with the concurrence of the
318 commission that the applicant meets the qualifications listed in Section 61-2c-203; and

319 (v) includes any information required by the division by rule;

320 (b) pay to the division:

321 (i) an application fee established by the division in accordance with Section 63-38-3.2;

322 and

323 (ii) the reasonable expenses incurred in processing the application for [~~registration~~]
324 licensure including the costs incurred by the division under Subsection (4);

325 (c) meet the requirements under Section 61-2c-204 for:

326 (i) obtaining a surety bond;

327 (ii) depositing assets; or

328 (iii) providing a letter of credit; and

329 (d) comply with Subsection (4).

330 (2) The division, with the concurrence of the commission, shall grant a [~~registration~~]
331 license to an applicant if the division finds that the applicant:

332 (a) meets the qualifications of Sections 61-2c-203 and 61-2c-204; and

333 (b) complies with this section.

334 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an
335 applicant who is denied [~~registration~~] licensure under this chapter may submit a request for
336 agency review to the executive director within 30 days following the issuance of the order
337 denying the [~~registration~~] licensure.

338 (4) (a) An individual applying for [~~registration~~] licensure under this chapter and any
339 control person of the applicant shall:

340 (i) submit a fingerprint card in a form acceptable to the division at the time the
341 registration statement is filed; [~~and~~]

342 (ii) consent to a fingerprint background check by:

343 (A) the Utah Bureau of Criminal Identification; and

344 (B) the Federal Bureau of Investigation[.]; and

345 (iii) provide proof using forms approved by the division of having successfully
346 completed:

347 (A) a 90-hour prelicensing course approved by the commission under Section
348 61-2c-104; and

349 (B) an examination approved by the commission under Section 61-2c-104.

350 (b) The division shall request the Department of Public Safety to complete a Federal
351 Bureau of Investigation criminal background check for each applicant and each control person
352 of an applicant through a national criminal history system.

353 (c) The applicant shall pay the cost of:

354 (i) the fingerprinting required by this section; and

355 (ii) the background check required by this section.

356 (d) (i) A [~~registration~~] license under this chapter is conditional pending completion of
357 the criminal background check required by this Subsection (4).

358 (ii) If a criminal background check discloses that an applicant or an applicant's control
359 person failed to accurately disclose a criminal history, the [~~registration~~] license shall be
360 immediately and automatically revoked.

361 (iii) An individual or entity whose conditional [~~registration~~] license is revoked under
362 Subsection (4)(d)(ii) may appeal the revocation in a hearing conducted:

363 (A) after the revocation; and

364 (B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

365 Section 8. Section **61-2c-203** is amended to read:

366 **61-2c-203. Qualifications for licensure.**

367 (1) To qualify for [~~registration~~] licensure under this chapter, an individual shall:

368 (a) have good moral character and the competency to transact the business of

369 residential mortgage loans;

370 (b) not have been convicted of a felony or misdemeanor involving moral turpitude in
371 the ~~[five]~~ ten years preceding the date the individual applies for ~~[registration]~~ a license, except
372 as provided in Subsection (3);

373 (c) not have had a license or registration suspended, revoked, surrendered, canceled, or
374 denied in the five years preceding the date the individual applies for ~~[registration,]~~ licensure
375 except as provided in Subsection (3), if:

376 (i) the registration or license is issued by this state or another jurisdiction; and

377 (ii) the suspension, revocation, surrender, cancellation, or denial is based on
378 misconduct in a professional capacity that relates to good moral character or the competency to
379 transact the business of residential mortgage loans.

380 (2) To qualify for ~~[registration]~~ licensure under this chapter an entity may not have:

381 (a) any of the following individuals in management who fails to meet the requirements
382 of Subsection (1):

383 (i) a manager or a managing partner;

384 (ii) a director;

385 (iii) an executive officer; or

386 (iv) an individual occupying a position or performing functions similar to those
387 described in Subsections (2)(a)(i) through (iii); and

388 (b) a control person who fails to meet the requirements of Subsection (1).

389 (3) If an individual or a control person of an entity fails to meet the requirements of
390 Subsection (1)(b) or (c), but otherwise meets the qualifications for ~~[registration]~~ licensure, and
391 provides evidence satisfactory to the division with the concurrence of the commission that the
392 individual or control person has good moral character and the competency to transact the
393 business of residential mortgage loans, notwithstanding the failure to meet the requirements of
394 Subsection (1)(b) or (c) the division may permit that individual or entity to be ~~[registered]~~
395 licensed under this chapter.

396 Section 9. Section **61-2c-204** is amended to read:

397 **61-2c-204. Requirements for bonding, letter of credit, or deposit of assets.**

398 (1) If an applicant is an individual, the applicant shall:

399 (a) file with the division a surety bond:

- 400 (i) that meets the requirements of Subsection (3); and
- 401 (ii) in the amount not less than \$10,000; or
- 402 (b) demonstrate to the satisfaction of the division that:
- 403 (i) the applicant is an employee or agent of an entity [~~registered~~] licensed under this
- 404 chapter; and
- 405 (ii) the acts of the applicant are covered by a surety bond filed with the division under
- 406 Subsection (2) by the entity [~~registered~~] licensed under this chapter for which the applicant is
- 407 an employee or agent.
- 408 (2) If the applicant is an entity, the applicant shall file with the division a surety bond:
- 409 (a) that meets the requirements of Subsection (4); and
- 410 (b) in an amount not less than [~~\$25,000~~] \$200,000.
- 411 (3) A surety bond filed under this section shall name as beneficiaries:
- 412 (a) the state, for payment of costs incurred and charges made in connection with an
- 413 enforcement action under Part 4, Enforcement, against the applicant including costs and
- 414 charges relating to an examination or investigation; and
- 415 (b) after all claims and charges of the state have been paid in full, any person who has a
- 416 claim against the surety on the bond based on any default or violation of any duty or obligation
- 417 of the applicant.
- 418 (4) If an applicant is an entity, a surety bond filed under this section shall:
- 419 (a) comply with Subsection (3); and
- 420 (b) cover the acts of:
- 421 (i) the entity [~~registered~~] licensed under this chapter;
- 422 (ii) any control person of the entity [~~registered~~] licensed under this chapter; and
- 423 (iii) any agent or employee of the entity [~~registered~~] licensed under this chapter.
- 424 (5) If an individual [~~registered~~] licensed under this chapter does not file a surety bond
- 425 under this section because at the time of applying for [~~registration~~] licensure that person met
- 426 the requirements of Subsection (1)(b), the individual shall post a surety bond meeting the
- 427 requirements of Subsections (1) and (3) by no later than 30 days from the day on which the
- 428 person is not covered by a surety bond in accordance with Subsection (1)(b).
- 429 (6) Notwithstanding the other provisions of this section, an applicant can comply with
- 430 the requirements of this section, if the applicant deposits assets with or provides a letter of

431 credit to the division:

432 (a) in the amounts required for a surety bond; and

433 (b) subject to the same surety conditions of Subsections (3) and (4).

434 Section 10. Section **61-2c-205** is amended to read:

435 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

436 (1) (a) A [registration] license under this chapter is valid for a two-year period.

437 (b) Notwithstanding Subsection (1)(a), the time period of a [registration] license may

438 be extended or shortened by as much as one year to maintain or change a renewal cycle

439 established by rule by the division.

440 (2) To renew a [registration] license, no later than 30 days before the date the

441 [registration] license expires, a [registrant] licensee shall:

442 (a) file a [registration] licensure statement meeting the requirements of Section

443 61-2c-202; [and]

444 (b) pay a fee to the division established by the division in accordance with Section

445 63-38-3.2[-]; and

446 (c) if the licensee is an individual, submit proof using forms approved by the division

447 of having completed during the two years prior to application the continuing education required

448 by the commission under Section 61-2c-104.

449 (3) (a) A [registrant] licensee under this chapter shall amend its [registration] licensure
450 statement filed with the division within ten days of the date on which there is a change in:

451 (i) a name under which the [registrant] licensee transacts the business of residential
452 mortgage loans in this state;

453 (ii) the location of the [registrant] licensee;

454 (iii) the control persons of the [registrant] licensee; or

455 (iv) any other information that is defined as material by rule made by the division.

456 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
457 grounds for disciplinary action against a [registrant] licensee.

458 (4) A [registrant] licensee shall notify the division by sending the division a signed
459 statement within ten business days of:

460 (a) a conviction of any criminal offense;

461 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business

462 of residential mortgage loans; or

463 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
464 license or professional registration of the [registrant] licensee, whether the license or
465 registration is issued by this state or another jurisdiction.

466 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
467 license on or before the expiration date of the license.

468 (b) Within 30 calendar days after the expiration date, a licensee whose license has
469 expired may apply to reinstate the expired license upon:

470 (i) payment of a renewal fee and a late fee determined by the division under Section
471 63-38-3.2; and

472 (ii) providing proof using forms approved by the division of having completed the
473 continuing education required by the commission under Section 61-2c-104.

474 (c) After the 30 calendar days described in Subsection (5)(b) and within six months
475 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
476 license upon:

477 (i) payment of a renewal fee and a late fee determined by the division under Section
478 63-38-3.2;

479 (ii) providing proof using forms approved by the division of having completed the
480 continuing education required by the commission under Section 61-2c-104; and

481 (iii) completing an additional 12 hours of continuing education approved by the
482 commission under Section 61-2c-104.

483 (d) A licensee whose license has been expired for more than one year may apply to
484 reinstate an expired license upon:

485 (i) satisfying the requirements of Subsection (5)(c); and

486 (ii) passing the examination approved by the commission under Section 61-2c-104.

487 Section 11. Section **61-2c-301** is amended to read:

488 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

489 (1) An individual or entity transacting the business of residential mortgage loans in this
490 state may not:

491 (a) give or receive compensation or anything of value in exchange for a referral of
492 residential mortgage loan business unless the compensation or thing of value is de minimis as

- 493 defined by the division;
- 494 (b) charge a fee in connection with a residential mortgage loan transaction:
- 495 (i) that is excessive; or
- 496 (ii) if the individual or entity does not comply with Section 70D-1-6;
- 497 (c) give or receive compensation or anything of value in exchange for a referral of
- 498 settlement or loan closing services related to a residential mortgage loan transaction;
- 499 (d) make a false statement or representation for purposes of inducing a lender to extend
- 500 credit as part of a residential mortgage loan transaction;
- 501 (e) give or receive compensation or anything of value to influence the independent
- 502 judgment of an appraiser in reaching a value conclusion in a residential mortgage loan
- 503 transaction;
- 504 (f) violate or not comply with:
- 505 (i) this chapter;
- 506 (ii) an order of the commission or division; or
- 507 (iii) a rule made by the division;
- 508 (g) fail to respond within the required time period to:
- 509 (i) a notice or complaint of the division; or
- 510 (ii) a request for information from the division;
- 511 (h) make false representations to the division, including in a [~~registration~~] licensure
- 512 statement;
- 513 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,
- 514 engage in the business of residential mortgage loans with respect to the transaction if the
- 515 individual or entity also acts in any of the following capacities with respect to the same
- 516 residential mortgage loan transaction:
- 517 (i) appraiser;
- 518 (ii) escrow agent; or
- 519 (iii) general contractor;
- 520 ~~(j)~~ (j) engage in unprofessional conduct as defined by rule; or
- 521 ~~(k)~~ (k) engage in an act or omission in transacting the business of residential mortgage
- 522 loans that constitutes dishonesty, fraud, or misrepresentation.
- 523 (2) Whether or not the crime is related to the business of residential mortgage loans, it

524 is a violation of this chapter for a [registrant] licensee or a control person of a [registrant]
525 licensee to do any of the following with respect to a criminal offense which involves moral
526 turpitude:

- 527 (a) be convicted;
- 528 (b) plead guilty or nolo contendere;
- 529 (c) enter a plea in abeyance; or
- 530 (d) be subjected to a criminal disposition similar to the ones described in Subsections
531 (2)(a) through (c).

532 Section 12. Section **61-2c-302** is amended to read:

533 **61-2c-302. Record requirements.**

534 (1) For the time period specified in Subsection (2), a [registrant] licensee shall make or
535 possess any record required for that [registrant] licensee by a rule made by the division.

536 (2) A [registrant] licensee shall maintain in its possession a record described in
537 Subsection (1) until the later of four years from the last to occur of the following:

- 538 (a) the final entry on a residential mortgage loan is made by that [registrant] licensee;
- 539 (b) if the residential mortgage loan is serviced by the [registrant] licensee:
 - 540 (i) the residential mortgage loan is paid in full; or
 - 541 (ii) the [registrant] licensee ceases to service the residential mortgage loan; or
- 542 (c) if the residential mortgage loan is not serviced by the [registrant] licensee, the
543 residential mortgage loan is closed.

544 Section 13. Section **61-2c-401** is amended to read:

545 **61-2c-401. Investigations -- Subpoena power of division.**

546 (1) The division may investigate or cause to be investigated the actions of:

- 547 (a) a [registrant] licensee and the control persons of any [registrant] licensee;
- 548 (b) an applicant for [registration] licensure under this chapter, and the control persons
549 of any applicant; or
- 550 (c) any individual or entity that transacts the business of residential mortgage loans
551 within this state, and the control persons of any such entity.

552 (2) In conducting investigations and adjudicative proceedings, the division may:

- 553 (a) subpoena witnesses;
- 554 (b) take evidence;

555 (c) require by subpoena duces tecum the production of books, papers, contracts,
556 records, other documents, or information considered relevant to an investigation; and

557 (d) serve a subpoena by certified mail.

558 (3) A failure to respond to a subpoena served by the division is considered as a separate
559 violation of this chapter.

560 Section 14. Section **61-2c-402** is amended to read:

561 **61-2c-402. Disciplinary action -- Reinstatement.**

562 (1) Subject to the requirements of this section, if an individual or entity required to be
563 [registered] licensed under this chapter violates this chapter or any federal law regulating the
564 business of residential mortgage loans, the commission with the concurrence of the director,
565 may:

566 (a) impose a civil penalty against the individual or entity in an amount not to exceed
567 \$500 per violation;

568 (b) do any of the following to a [registration] license under this chapter:

569 (i) suspend;

570 (ii) revoke;

571 (iii) place on probation;

572 (iv) deny renewal; or

573 (v) deny reinstatement; or

574 (c) do both Subsections (1)(a) and (b).

575 (2) (a) Before the commission and the division may take an action described in
576 Subsection (1), the division shall:

577 (i) give notice to the individual or entity; and

578 (ii) schedule an adjudicative proceeding.

579 (b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the
580 commission and the director determine that an individual or entity required to be [registered]
581 licensed under this [section] chapter has violated this chapter, the commission may take an
582 action described in Subsection (1) by written order.

583 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an
584 individual or entity against whom disciplinary action is taken under this section may seek
585 review by the executive director of the disciplinary action.

586 (4) If an individual or entity prevails in a judicial appeal and the court finds that the
587 state action was undertaken without substantial justification, the court may award reasonable
588 litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small
589 Business Equal Access to Justice Act.

590 (5) (a) An order issued under this section takes effect 30 days after the service of the
591 order unless otherwise provided in the order.

592 (b) If an appeal of an order issued under this section is taken by an individual or entity,
593 the division may stay enforcement of the commission's order in accordance with Section
594 63-46b-18.

595 (6) If ordered by the court of competent jurisdiction, the division shall promptly take an
596 action described in Subsection (1)(b) against a [registration] license granted under this chapter.

597 (7) (a) If a [registration] license under this chapter is revoked, the individual or entity
598 may apply to have the [registration] license reinstated by complying with the requirements of
599 Section 61-2c-202 for [registration] licensure.

600 (b) Notwithstanding Subsection (7)(a), if a [registration] license under this chapter is
601 revoked, the individual or entity may not apply for reinstatement of the [registration] license
602 sooner than five years after the date the [registration] license is revoked in accordance with this
603 section.

604 (c) If an individual or entity whose [registration] license has been revoked applies for
605 reinstatement in accordance with Subsection (7)(b), the commission and the division may grant
606 the application for reinstatement if they find that:

607 (i) there has been good conduct on the part of the applicant subsequent to the events
608 that led to the revocation, and that the subsequent good conduct outweighs the events which led
609 to the revocation; and

610 (ii) the interest of the public is not likely to be harmed by the granting of the
611 [registration] license.

612 Section 15. Section **61-2c-404** is enacted to read:

613 **61-2c-404. Criminal penalties.**

614 In addition to being subject to other enforcement under this chapter, an individual who
615 violates this chapter is:

616 (1) upon conviction of a first violation of this chapter, guilty of a class C misdemeanor;

617 and

618 (2) upon conviction of a subsequent violation of this chapter, guilty of a class B

619 misdemeanor.

620 Section 16. Section **61-2c-405** is enacted to read:

621 **61-2c-405. Rescission.**

622 If an individual or entity engages in the business of residential mortgage loans without

623 being properly licensed under this chapter, the person that receives the residential mortgage

624 loan may rescind the residential mortgage loan at any time within three years after the day of

625 the closing of the residential mortgage loan.

626 Section 17. **Effective date.**

627 This act takes effect on January 1, 2004.

Legislative Review Note

as of 1-21-03 10:25 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

AMENDED NOTE

State Impact

This bill would increase revenue to the Commerce Service Fund by \$70,000 in FY 04 and \$50,000 in FY 05. Expenses would increase by \$27,500 in FY 04 and \$22,800 in FY 05. The bill charges the division with enforcing federal acts RESPA, TILA, Reg. Z, Reg. B, HOEPA and possibly HMDA that apply to state registered mortgage lenders. These costs are not quantifiable at this time, but could be substantial.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Commerce Service Fund	\$27,500	\$22,800	\$70,000	\$50,000
TOTAL	\$27,500	\$22,800	\$70,000	\$50,000

Individual and Business Impact

Revenues would come from about 50 state chartered institutions and their 300 mortgage officers. There would be some expense involved in continuing education requirements.

Office of the Legislative Fiscal Analyst