



# Senate

General Assembly

**File No. 232**

January Session, 2009

Substitute Senate Bill No. 948

*Senate, March 26, 2009*

The Committee on Banks reported through SEN. DUFF of the 25th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING IMPLEMENTATION OF THE S.A.F.E.  
MORTGAGE LICENSING ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-21 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Notwithstanding any provision of state law and except as  
4 provided in [subsection] subsections (b) and (d) of this section and  
5 subdivision (2) of subsection (a) of section 36a-534b, as amended by  
6 this act, the following records of the Department of Banking shall not  
7 be disclosed by the commissioner or any employee of the Department  
8 of Banking, or be subject to public inspection or discovery:

9 (1) Examination and investigation reports and information  
10 contained in or derived from such reports, including examination  
11 reports prepared by the commissioner or prepared on behalf of or for  
12 the use of the commissioner;

13 (2) Confidential supervisory or investigative information obtained  
14 from a state, federal or foreign regulatory or law enforcement agency;  
15 and

16 (3) Information obtained, collected or prepared in connection with  
17 examinations, inspections or investigations, and complaints from the  
18 public received by the Department of Banking, if such records are  
19 protected from disclosure under federal or state law or, in the opinion  
20 of the commissioner, such records would disclose, or would  
21 reasonably lead to the disclosure of: (A) Investigative information the  
22 disclosure of which would be prejudicial to such investigation, until  
23 such time as the investigation and all related administrative and legal  
24 actions are concluded; (B) personal or financial information, including  
25 account or loan information, without the written consent of the person  
26 or persons to whom the information pertains; or (C) information that  
27 would harm the reputation of any person or affect the safety and  
28 soundness of any person whose activities in this state are subject to the  
29 supervision of the commissioner, and the disclosure of such  
30 information under this subparagraph would not be in the public  
31 interest.

32 (b) The commissioner may, without waiving any privilege, disclose  
33 the records described in subsection (a) of this section for any  
34 appropriate supervisory, governmental, law enforcement or other  
35 public purpose. Any such disclosure shall be made under safeguards  
36 designed to prevent further dissemination of such records. In any  
37 proceeding before a court, the court may issue a protective order in  
38 appropriate circumstances to protect the confidentiality of any such  
39 record and order that any such record on file with the court or filed in  
40 connection with the court proceeding be sealed and that the public be  
41 excluded from any portion of the proceeding at which any such record  
42 is disclosed.

43 (c) No director, officer, employee or agent of any Connecticut bank  
44 or Connecticut credit union shall disclose without the prior written  
45 consent of the commissioner any information contained in an

46 examination report about such bank or credit union, which  
47 information is not otherwise a matter of public record.

48 (d) (1) The provisions of subsections (a) and (b) of this section shall  
49 not apply to the disclosure of [(1)] any record [that is] provided to or  
50 maintained by the commissioner with the [Nationwide Mortgage  
51 Licensing System to any supervisory, governmental or law  
52 enforcement agency that is authorized to access such record on the  
53 system, provided such record shall remain the property of the  
54 Department of Banking and may not be further disclosed to any  
55 person without the consent of the commissioner, or (2) any record of a  
56 licensee that is maintained by the commissioner with such system to  
57 such licensee. No person may obtain information from the Nationwide  
58 Mortgage Licensing System that could not otherwise be obtained  
59 under state law. No information obtained from the Nationwide  
60 Mortgage Licensing System shall be admissible as evidence in, or used  
61 to initiate, a civil proceeding in this state unless such information  
62 would otherwise be admissible in such proceeding under state law.]  
63 system. Except as otherwise provided in Section 1512 of the federal  
64 S.A.F.E. Mortgage Licensing Act of 2008, any requirements under  
65 federal law or any law of this state, including this section and chapter  
66 14 and any privilege arising under federal law or any law of this state,  
67 including the rules of any federal court or court of this state that  
68 protect the disclosure of any record provided to or maintained with  
69 the system, shall continue to apply to such record after it has been  
70 disclosed to the system. Such record may be shared with all state and  
71 federal regulatory officials that have oversight authority over the  
72 mortgage industry without the loss of privilege or the loss of  
73 confidentiality protections provided by federal law or the laws of this  
74 state. For purposes of this subsection, the commissioner may enter into  
75 agreements or sharing arrangements with other governmental  
76 agencies, the Conference of State Bank Supervisors, the American  
77 Association of Residential Mortgage Regulators or associations  
78 representing governmental agencies.

79 (2) Any information or material that is protected from disclosure

80 under subdivision (1) of this subsection shall not be subject to (A)  
81 disclosure under any federal or state law governing disclosure to the  
82 public of information held by an officer or agency of the federal  
83 government or the respective state; or (B) subpoena, discovery or  
84 admission into evidence in any private civil action or administrative  
85 process, except a person may, at such person's discretion, waive in  
86 whole or in part a privilege held by the system concerning such  
87 information and material.

88 (3) Any law of this state relating to the disclosure of confidential  
89 supervisory information or of any information or material described in  
90 subdivision (1) of this subsection that is inconsistent with subdivision  
91 (1) shall be superseded by the requirements of this subsection.

92 (e) The confidentiality provisions of this section shall not apply to  
93 records relating to the employment history of, and publicly  
94 adjudicated disciplinary and enforcement actions against, mortgage  
95 loan originators that are included in the system for access by the  
96 public.

97 (f) For purposes of this section, "system" has the same meaning as  
98 provided in section 36a-485, as amended by this act.

99 Sec. 2. Section 36a-485 of the general statutes is repealed and the  
100 following is substituted in lieu thereof (*Effective from passage*):

101 As used in this section and sections 36a-486 to 36a-498a, inclusive, as  
102 amended by this act, and sections 36a-534a and 36a-534b, unless the  
103 context otherwise requires:

104 (1) "Advance fee" means any consideration paid or given, directly or  
105 indirectly, to a mortgage lender, mortgage correspondent lender or  
106 mortgage broker required to be licensed pursuant to sections 36a-485  
107 to 36a-498a, inclusive, as amended by this act, and sections 36a-534a  
108 and 36a-534b, prior to the closing of a residential mortgage loan to any  
109 person, including, but not limited to, loan fees, points, broker's fees or  
110 commissions, transaction fees or similar prepaid finance charges;

111 (2) "Advertise", [or] "advertisement" or "advertising" means the use  
112 of any announcement, statement, assertion or representation that is  
113 placed before the public in a newspaper, magazine or other  
114 publication, or in the form of a notice, circular, pamphlet, letter or  
115 poster or over any radio or television station, by means of the Internet,  
116 or by other electronic means of distributing information, by personal  
117 contact, or in any other way;

118 (3) "Branch office" means a location other than the main office at  
119 which a licensee or any person on behalf of a licensee acts as a  
120 mortgage lender, mortgage correspondent lender or mortgage broker;

121 (4) "Control person" means an individual that directly or indirectly  
122 exercises control over another person. Any person that (A) is a  
123 director, general partner or executive officer; (B) directly or indirectly  
124 has the right to vote ten per cent or more of a class of any voting  
125 security or has the power to sell or direct the sale of ten per cent or  
126 more of the capital, is presumed to be a control person. For purposes of  
127 this subdivision, "control" means the power, directly or indirectly, to  
128 direct the management or policies of a company, whether through  
129 ownership of securities, by contract or otherwise;

130 (5) "Depository institution" has the same meaning as provided in  
131 Section 3 of the Federal Deposit Insurance Act, 12 USC 1813, and  
132 includes any Connecticut credit union, federal credit union or out-of-  
133 state credit union;

134 (6) "Federal banking agency" means the Board of Governors of the  
135 Federal Reserve System, the Comptroller of the Currency, the Director  
136 of the Office of Thrift Supervision, the National Credit Union  
137 Administration and the Federal Deposit Insurance Corporation;

138 [(4)] (7) "First mortgage loan" means a [loan or an extension of  
139 credit, including, but not limited to, an extension of credit pursuant to  
140 a contract or an assigned contract for the sale of goods or services,  
141 made to a natural person, the proceeds of which are to be used  
142 primarily for personal, family or household purposes, and which]

143 residential mortgage loan that is secured by a first mortgage; [upon  
144 any interest in one-to-four-family owner-occupied residential property  
145 located in this state which is not subject to any prior mortgages and  
146 includes the renewal or refinancing of an existing first mortgage loan;]

147 (8) "Immediate family member" means a spouse, child, sibling,  
148 parent, grandparent or grandchild and includes stepparents,  
149 stepchildren, stepsiblings and adoptive relationships;

150 (9) "Individual" means a natural person;

151 (10) "Loan processor" or "underwriter" means an individual who  
152 performs clerical or support duties as an employee at the direction of  
153 and subject to the supervision and instruction of a person licensed or  
154 exempt from licensing under sections 36a-485 to 36a-498a, inclusive, as  
155 amended by this act, and sections 36a-534a and 36a-534b, as amended  
156 by this act. The term "clerical or support duties" includes, subsequent  
157 to the receipt of an application, (A) the receipt, collection, distribution  
158 and analysis of information common for the processing or  
159 underwriting of a residential mortgage loan, and (B) communication  
160 with a consumer to obtain the information necessary for the processing  
161 or underwriting of a loan to the extent that such communication does  
162 not include offering or negotiating loan rates or terms or counseling  
163 consumers about residential mortgage loan rates or terms;

164 [(5)] (11) "Main office" means the main address designated on the  
165 [Nationwide Mortgage Licensing System] system;

166 [(6)] (12) "Mortgage broker" means a person who, [for a fee,  
167 commission or other valuable consideration, directly or indirectly,  
168 negotiates, solicits, arranges, places or finds a mortgage loan that is to  
169 be made by a mortgage lender or mortgage correspondent lender,  
170 whether or not the mortgage lender or mortgage correspondent lender  
171 are required to be licensed under sections 36a-485 to 36a-498a,  
172 inclusive] for compensation or gain or in the expectation of  
173 compensation or gain (A) takes a residential mortgage loan  
174 application, or (B) offers or negotiates terms of a residential mortgage

175 loan, excluding an individual who is sponsored by another mortgage  
176 lender, mortgage correspondent lender or mortgage broker;

177 [(7)] (13) "Mortgage correspondent lender" means a person engaged  
178 in the business of making residential mortgage loans in such person's  
179 own name where the loans are not held by such person for more than  
180 ninety days and are funded by another person through a warehouse  
181 agreement, table funding agreement or similar agreement;

182 [(8)] (14) "Mortgage lender" means a person engaged in the business  
183 of making residential mortgage loans in such person's own name  
184 utilizing such person's own funds or by funding loans through a  
185 warehouse agreement, table funding agreement or similar agreement;

186 [(9) "Mortgage loan" means a first mortgage loan or secondary  
187 mortgage loan;]

188 [(10)] (15) "Mortgage loan originator" means an individual who [is  
189 employed or retained by, or otherwise acts on behalf of, a mortgage  
190 lender, mortgage correspondent lender or mortgage broker licensee  
191 who, for, or with the expectation of, a fee, commission or other  
192 valuable consideration, takes an application for or negotiates, solicits,  
193 arranges or finds a mortgage loan. "Mortgage loan originator" does not  
194 include (1) an officer, if the licensee is a corporation; a general partner,  
195 if the licensee is a partnership; a member, if the licensee is a limited  
196 liability company; or a sole proprietor, if the licensee is a sole  
197 proprietorship, or (2) an individual whose responsibilities are limited  
198 to clerical and administrative tasks and who does not solicit borrowers,  
199 arrange or find mortgage loans, take applications or negotiate the  
200 terms of loans] takes a residential mortgage loan application or offers  
201 or negotiates terms of a residential mortgage loan for compensation or  
202 gain. "Mortgage loan originator" does not include (A) any person who  
203 does not otherwise come within the definition of mortgage loan  
204 originator and who performs purely administrative or clerical tasks on  
205 behalf of a mortgage loan originator; (B) a person who only performs  
206 real estate brokerage activities and is licensed in accordance with  
207 chapter 392, unless the individual is compensated by a mortgage

208 lender, mortgage correspondent lender, mortgage broker or other  
209 mortgage loan originator or by any agent of such mortgage lender,  
210 mortgage correspondent lender, mortgage broker or other mortgage  
211 loan originator; or (C) a person solely involved in extensions of credit  
212 relating to timeshare plans, as that term is defined in Paragraph 53D of  
213 11 USC 101. For purposes of this subdivision, "administrative or  
214 clerical tasks" means the receipt, collection and distribution of  
215 information common for the processing or underwriting of a loan in  
216 the mortgage industry and communication with a consumer to obtain  
217 information necessary for the processing or underwriting of a  
218 residential mortgage loan;

219 [(11)] (16) "Office" means a branch office or a main office;

220 (17) "Person" means a natural person, corporation, company, limited  
221 liability company, partnership or association;

222 [(12)] (18) "Principal amount of the loan" means the gross amount  
223 the borrower is obligated to repay including any prepaid finance  
224 charge that is financed, and any other charge that is financed;

225 (19) "Real estate brokerage activity" means any activity that involves  
226 offering or providing real estate brokerage services to the public,  
227 including (A) acting as a real estate agent or real estate broker for a  
228 buyer, seller, lessor or lessee of real property; (B) bringing together  
229 parties interested in the sale, purchase, lease, rental or exchange or real  
230 property; (C) negotiating, on behalf of any party, any portion of a  
231 contract relating to the sale, purchase, lease, rental or exchange of real  
232 property, other than in connection with providing financing with  
233 respect to any such transaction; (D) engaging in any activity for which  
234 a person engaged in the activity is required to be licensed as a real  
235 estate agent or real estate broker under any applicable law; and (E)  
236 offering to engage in any activity, or act in any capacity, described in  
237 this subdivision;

238 (20) "Registered mortgage loan originator" means any individual  
239 who (A) meets the definition of mortgage loan originator and is an



240 employee of a depository institution, a subsidiary that is owned and  
241 controlled by a depository institution and regulated by a federal  
242 banking agency, or an institution regulated by the Farm Credit  
243 Administration; and (B) is registered with and maintains a unique  
244 identifier through the system;

245 (21) "Residential mortgage loan" means any loan primarily for  
246 personal, family or household use that is secured by a mortgage, deed  
247 of trust or other equivalent consensual security interest on a dwelling  
248 as defined in Section 103 of the Consumer Credit Protection Act, 15  
249 USC 1602, or residential real estate located in this state upon which is  
250 constructed or intended to be constructed a dwelling, as so defined;

251 [(13) "Residential property" means improved real property used or  
252 occupied, or intended to be used or occupied, for residential purposes;]

253 (22) "Residential real estate" means any real property located in this  
254 state, upon which is constructed or intended to be constructed a  
255 dwelling as defined in Section 103 of the Consumer Credit Protection  
256 Act, 15 USC 1602;

257 [(14)] (23) "Secondary mortgage loan" means [(A) a loan or an  
258 extension of credit, including, but not limited to, an extension of credit  
259 pursuant to a contract or an assigned contract for the sale of goods or  
260 services, made to a natural person, the proceeds of which are to be  
261 used primarily for personal, family or household purposes, and] a  
262 residential mortgage loan that is secured, in whole or in part, by a  
263 mortgage, [upon any interest in one-to-four-family owner-occupied  
264 residential property located in this state,] provided such property is  
265 subject to one or more prior mortgages; [, and (B) the renewal or  
266 refinancing of any existing loan or extension of credit described in  
267 subparagraph (A) of this subdivision;]

268 [(15)] (24) "Simulated check" means a document that imitates or  
269 resembles a check but is not a negotiable instrument;

270 (25) "Sponsored" means employed or retained as an independent

271 contractor;

272 (26) "System" means the Nationwide Mortgage Licensing System  
273 and Registry developed and maintained by the Conference of State  
274 Bank Supervisors and the American Association of Residential  
275 Mortgage Regulators for the licensing and registration of mortgage  
276 lenders, mortgage correspondent lenders, mortgage brokers and  
277 mortgage loan originators;

278 ~~[(16)]~~ (27) "Table funding agreement" means an agreement wherein  
279 a person agrees to fund mortgage loans to be made in another person's  
280 name and to purchase such loans after they are made; [and]

281 (28) "Unique identifier" means a number or other identifier assigned  
282 by protocols established by the system; and

283 ~~[(17)]~~ (29) "Warehouse agreement" means an agreement to provide  
284 credit to a person to enable the person to have funds to make  
285 residential mortgage loans and hold such loans pending sale to other  
286 persons.

287 Sec. 3. Section 36a-534b of the general statutes is repealed and the  
288 following is substituted in lieu thereof (*Effective from passage*):

289 (a) [The Banking Commissioner] (1) In addition to any other duties  
290 imposed upon the Banking Commissioner by law, the commissioner  
291 shall require mortgage lenders, mortgage correspondent lenders,  
292 mortgage brokers and mortgage loan originators to be licensed and  
293 registered through the system. In order to carry out this requirement,  
294 the commissioner shall participate in the [Nationwide Mortgage  
295 Licensing System] system [for this state] and permit [such system] the  
296 system to process applications for mortgage lender, mortgage  
297 correspondent lender, mortgage broker and mortgage loan originator  
298 licenses in this state and receive and maintain records related to such  
299 licenses that are allowed or required to be maintained by the  
300 commissioner. For this purpose, the commissioner may establish, by  
301 order or regulation, the requirements and procedures necessary for

302 participation in the system, including, but not limited to: (A) Applicant  
303 background checks for criminal history through (i) fingerprint or other  
304 databases, (ii) civil or administrative records, or (iii) credit history or  
305 any other information as deemed necessary by the system; (B) fees to  
306 apply for or renew licenses through the system; (C) license renewal or  
307 reporting dates; and (D) the process for amending or surrendering a  
308 license or any other such activities as the commissioner deems  
309 necessary for participation in the system. For the purpose of  
310 participating in the system, the commissioner may waive or modify, in  
311 whole or in part, by regulation or order, any requirement of sections  
312 36a-485 to 36a-498a, inclusive, as amended by this act, and to establish  
313 new requirements as reasonably necessary to participate in the system.

314 (2) The commissioner shall report regularly to the system violations  
315 of and enforcement actions under sections 36a-485 to 36a-498a,  
316 inclusive, as amended by this act, sections 19 and 20 of this act and  
317 other relevant information.

318 (3) The commissioner may establish relationships or enter into  
319 contracts with the system or other entities designated by the system to  
320 collect and maintain records and process transaction fees or other fees  
321 related to licensees or other persons subject to sections 36a-485 to 36a-  
322 498a, inclusive, as amended by this act.

323 (4) For the purposes of sections 36a-485 to 36a-498a, inclusive, as  
324 amended by this act, and to reduce the points of contact that the  
325 Federal Bureau of Investigation may have to maintain under the  
326 federal S.A.F.E. Mortgage Licensing Act, the commissioner may use  
327 the system as a channeling agent for requesting information from and  
328 distributing information to the United States Department of Justice or  
329 any governmental agency.

330 (5) For the purposes of sections 36a-485 to 36a-498a, inclusive, as  
331 amended by this act, and to reduce the points of contact that the  
332 commissioner may have to maintain, the commissioner may use the  
333 system as a channeling agent for requesting and distributing  
334 information to and from any source, as directed by the commissioner.

335 (6) The commissioner shall establish a process whereby mortgage  
336 lenders, mortgage correspondent lenders, mortgage brokers and  
337 mortgage loan originators may challenge information entered into the  
338 system by the commissioner.

339 (b) (1) Each first mortgage lender license and secondary mortgage  
340 lender license in existence on June 30, 2008, shall be deemed on and  
341 after July 1, 2008, to be a mortgage lender license, as defined in section  
342 36a-485, as amended by this act; (2) each first mortgage correspondent  
343 lender license and secondary mortgage correspondent lender license in  
344 existence on June 30, 2008, shall be deemed on and after July 1, 2008, to  
345 be a mortgage correspondent lender license, as defined in section 36a-  
346 485, as amended by this act; (3) each first mortgage broker license and  
347 secondary mortgage broker license in existence on June 30, 2008, shall  
348 be deemed on and after July 1, 2008, to be a mortgage broker license, as  
349 defined in section 36a-485, as amended by this act; and (4) each  
350 originator registration in existence on June 30, 2008, shall be deemed  
351 on and after July 1, 2008, to be a mortgage loan originator license, as  
352 defined in section 36a-485, as amended by this act.

353 (c) (1) Each person licensed on July 1, 2008, as a mortgage lender,  
354 mortgage correspondent lender, mortgage broker or mortgage loan  
355 originator shall, prior to October 1, 2008, transition on to the  
356 [Nationwide Mortgage Licensing System] system by submitting all  
357 licensing and license-related information required by the [Nationwide  
358 Mortgage Licensing System] system for this state.

359 (2) On and after July 1, 2008, any licensing or license-related filings  
360 shall be submitted exclusively through the [Nationwide Mortgage  
361 Licensing System] system.

362 (3) Any person making any filing or submission of any information  
363 on the [Nationwide Mortgage Licensing System] system shall do so in  
364 accordance with the procedures and requirements of [such system] the  
365 system and pay the applicable fees or charges to [such system] the  
366 system. Each mortgage lender, mortgage correspondent lender,  
367 mortgage broker and mortgage loan originator licensee shall submit to

368 the system reports of condition that shall be in such form and shall  
369 contain such information as the system may require.

370 (d) Notwithstanding the provisions of this section, any initial  
371 application for a license submitted on the [Nationwide Mortgage  
372 Licensing System] system between October 1, 2008, and December 31,  
373 2008, shall not be approved by the commissioner prior to January 1,  
374 2009.

375 (e) For purposes of this section, "system" has the same meaning as  
376 provided in section 36a-485, as amended by this act.

377 Sec. 4. Section 36a-498c of the general statutes is repealed and the  
378 following is substituted in lieu thereof (*Effective from passage*):

379 At least once a year, each mortgage lender and mortgage  
380 correspondent lender, both as defined in section 36a-485, as amended  
381 by this act, and licensed under section 36a-489, as amended by this act,  
382 shall adopt a mortgage loan policy with respect to subprime mortgage  
383 loans and nontraditional mortgage loans made by such mortgage  
384 lender or such mortgage correspondent lender based on and consistent  
385 with the most current version of the Conference of State Bank  
386 Supervisors, American Association of Residential Mortgage Regulators  
387 and National Association of Consumer Credit Administrators  
388 Statement on Subprime Mortgage Lending, and the Conference of  
389 State Bank Supervisors and American Association of Residential  
390 Mortgage Regulators Guidance on Nontraditional Mortgage Product  
391 Risks. Such licensees shall comply with such policy and develop and  
392 implement internal controls that are reasonably designed to ensure  
393 such compliance. The mortgage loan policy and any residential  
394 mortgage loan, as defined in section 36a-485, as amended by this act,  
395 made pursuant to the policy shall be subject to examination concerning  
396 prudent lending practices by the [Banking Commissioner]  
397 commissioner.

398 Sec. 5. Section 36a-486 of the general statutes is repealed and the  
399 following is substituted in lieu thereof (*Effective from passage*):

400 (a) No person shall engage in the business of making residential  
401 mortgage loans or act as a mortgage broker in this state unless such  
402 person has first obtained the required license for its main office and  
403 each branch office where such business is conducted in accordance  
404 with the provisions of sections 36a-485 to 36a-498a, inclusive, as  
405 amended by this act, and sections 36a-534a and 36a-534b. Effective  
406 April 1, 2010, any such person who is an individual shall also obtain a  
407 mortgage loan originator license prior to conducting such business  
408 unless such individual does not engage directly in the activities of a  
409 mortgage loan originator. A person, other than a licensed mortgage  
410 loan originator acting on behalf of [the] a mortgage lender [,] or  
411 mortgage correspondent lender, [or mortgage broker, that employs or  
412 retains such mortgage loan originator,] shall be deemed to be engaged  
413 in the business of making residential mortgage loans if such person  
414 advertises, causes to be advertised, solicits [,] or offers to make [or  
415 makes] residential mortgage loans, either directly or indirectly. A  
416 person, other than a licensed mortgage loan originator acting on behalf  
417 of a mortgage broker, shall be deemed to be acting as a mortgage  
418 broker if such person advertises or causes to be advertised that such  
419 person will negotiate, solicit, place or find a residential mortgage loan,  
420 either directly or indirectly. A mortgage correspondent lender shall not  
421 be deemed to be acting as a mortgage lender if such mortgage  
422 correspondent lender makes a loan utilizing its own funds in a  
423 situation where another person does not honor such person's  
424 commitment to fund the loan.

425 (b) (1) No person licensed as a mortgage lender, mortgage  
426 correspondent lender or mortgage broker shall [employ or retain]  
427 engage the services of a mortgage loan originator unless such  
428 mortgage loan originator is licensed under sections 36a-485 to 36a-  
429 498a, inclusive, as amended by this act, or section 36a-534b. An  
430 individual, unless specifically exempted under subdivision (2) of this  
431 subsection, shall not engage in the business of a mortgage loan  
432 originator with respect to any dwelling, as defined in Section 103 of the  
433 Consumer Credit Protection Act, 15 USC 1602, located in this state  
434 without first obtaining and maintaining annually a license as a

435 mortgage loan originator under sections 36a-485 to 36a-498a, inclusive,  
436 as amended by this act, and sections 36a-534a and 36a-534b, as  
437 amended by this act. Each licensed mortgage loan originator shall  
438 register with and maintain a valid unique identifier issued by the  
439 system. No individual may act as a mortgage loan originator [without  
440 being licensed, or act as a mortgage loan originator] for more than one  
441 [person] sponsor at the same time. The license of a mortgage loan  
442 originator is not effective during any period when such mortgage loan  
443 originator is not [associated with] sponsored by a licensed mortgage  
444 lender, mortgage correspondent lender or mortgage broker. Either the  
445 mortgage loan originator or the mortgage lender, mortgage  
446 correspondent lender or mortgage broker may file a notification of the  
447 termination of [employment] sponsorship of a mortgage loan  
448 originator with the [Nationwide Mortgage Licensing System] system.

449 (2) The following are exempt from this section: (A) A registered  
450 mortgage loan originator, when acting for an institution or subsidiary  
451 described in subdivision (20) of section 36a-485, as amended by this  
452 act, (B) an individual who offers or negotiates the terms of a residential  
453 mortgage loan with or on behalf of an immediate family member of  
454 such individual, (C) an individual who offers or negotiates the terms of  
455 a residential mortgage loan secured by a dwelling, as defined in  
456 Section 103 of the Consumer Credit Protection Act, 15 USC 1602, that  
457 served as the individual's residence, and (D) a licensed attorney who  
458 negotiates the terms of a residential mortgage loan on behalf of a client  
459 as an ancillary matter to the attorney's representation of the client,  
460 unless the attorney is compensated by a mortgage lender, mortgage  
461 correspondent lender, mortgage broker or other mortgage loan  
462 originator or by any agent of such mortgage lender, mortgage  
463 correspondent lender, mortgage broker or other mortgage loan  
464 originator.

465 (3) Effective July 31, 2010, a loan processor or underwriter who is an  
466 independent contractor may not engage in the activities of a loan  
467 processor or underwriter unless such independent contractor loan  
468 processor or underwriter obtains and maintains a license as a

469 mortgage loan originator under section 36a-489, as amended by this  
470 act. Each independent contractor loan processor or underwriter  
471 licensed as a mortgage loan originator shall have and maintain a valid  
472 unique identifier issued by the system.

473 (4) An individual engaging solely in loan processor or underwriter  
474 activities shall not represent to the public, through advertising or other  
475 means of communicating or providing information, including the use  
476 of business cards, stationery, brochures, signs, rate lists or other  
477 promotional items, that such individual can or will perform any of the  
478 activities of a mortgage loan originator.

479 (c) Each residential mortgage loan negotiated, solicited, arranged,  
480 placed, found or made without a license shall constitute a separate  
481 violation for purposes of section 36a-50.

482 Sec. 6. Section 36a-487 of the general statutes is repealed and the  
483 following is substituted in lieu thereof (*Effective from passage*):

484 (a) The following are exempt from licensing under sections 36a-485  
485 to 36a-498a, inclusive, as amended by this act, and section 36a-534b, as  
486 amended by this act:

487 [(1)] Any bank, out-of-state bank, Connecticut credit union, federal  
488 credit union [,] or out-of-state credit union, [provided subsidiaries of  
489 such institutions other than] provided such bank or credit union is  
490 federally insured, any operating [subsidiaries] subsidiary of a federal  
491 [banks and] bank or federally-chartered out-of-state [banks are not  
492 exempt from licensure;] bank or any wholly-owned subsidiary of a  
493 Connecticut bank or a Connecticut credit union. Each wholly-owned  
494 subsidiary of a Connecticut bank or Connecticut credit union that  
495 engages in the business of making residential mortgage loans or acts as  
496 a mortgage broker in this state shall provide written notification to the  
497 commissioner prior to engaging in such activity.

498 (b) The following are exempt from licensing as a mortgage lender or  
499 mortgage correspondent lender under sections 36a-485 to 36a-498a,



500 inclusive, as amended by this act, and section 36a-534b, as amended by  
501 this act:

502 [(2)] (1) Persons making five or fewer residential mortgage loans  
503 within any period of twelve consecutive months, provided nothing  
504 herein shall relieve such persons from complying with all applicable  
505 laws;

506 [(3)] (2) Bona fide nonprofit corporations making residential  
507 mortgage loans to promote home ownership for the economically  
508 disadvantaged;

509 [(4)] (3) Agencies of the federal government, or any state or  
510 municipal government, or any quasi-governmental agency making  
511 residential mortgage loans under the specific authority of the laws of  
512 any state or the United States;

513 [(5)] (4) Persons licensed under sections 36a-555 to 36a-573,  
514 inclusive, as amended by this act, when making residential mortgage  
515 loans authorized by said sections;

516 [(6)] (5) Persons owning real property who take back from the buyer  
517 of such property a secondary mortgage loan in lieu of any portion of  
518 the purchase price of the property;

519 [(7)] (6) Any corporation or its affiliate [which] that makes  
520 residential mortgage loans exclusively for the benefit of its employees  
521 or agents;

522 [(8)] (7) Any corporation, licensed in accordance with section 38a-41,  
523 or its affiliate or subsidiary, [which] that makes residential mortgage  
524 loans to promote home ownership in urban areas;

525 [(9)] (8) Persons acting as fiduciaries with respect to any employee  
526 pension benefit plan qualified under the Internal Revenue Code of  
527 1986, or any subsequent corresponding internal revenue code of the  
528 United States, as from time to time amended, who make residential  
529 mortgage loans solely to plan participants from plan assets; and

530 [(10)] (9) Persons making secondary mortgage loans to individuals  
531 related to the maker by blood or marriage.

532 Sec. 7. Section 36a-488 of the general statutes is repealed and the  
533 following is substituted in lieu thereof (*Effective from passage*):

534 (a) (1) The commissioner shall not issue a mortgage lender license, a  
535 mortgage correspondent lender license or a mortgage broker license to  
536 any person unless such person meets the following tangible net worth  
537 and experience requirements, as applicable: (A) The minimum tangible  
538 net worth requirement for a mortgage lender shall be two hundred  
539 fifty thousand dollars and the minimum tangible net worth  
540 requirement for a mortgage correspondent lender and a mortgage  
541 broker shall be (i) prior to March 2, 2009, twenty-five thousand dollars,  
542 and (ii) on and after March 2, 2009, fifty thousand dollars, and (B) a  
543 mortgage lender, mortgage correspondent lender or mortgage broker  
544 shall have, at the main office for which the license is sought, a qualified  
545 individual and, at each branch office, a branch manager with  
546 supervisory authority over the lending or brokerage activities [who  
547 has] with at least three years' experience in the mortgage business  
548 within the five years immediately preceding the date of the application  
549 for the license [, and at each branch office, the lender or broker shall  
550 have a branch manager with supervisory authority over the lending or  
551 brokerage activities who has at least three years' experience in the  
552 mortgage business within the five years immediately preceding the  
553 application for the license] and who, effective April 1, 2010, has  
554 completed the prelicensing education requirement described in section  
555 9 of this act and passed a written test that meets the test requirement  
556 described in section 9 of this act. As used in this subdivision,  
557 "experience in the mortgage business" means paid experience in the  
558 origination, processing or underwriting of residential mortgage loans,  
559 the marketing of such loans in the secondary market or in the  
560 supervision of such activities, or any other relevant experience as  
561 determined by the commissioner.

562 (2) Each licensee shall maintain the net worth required by this

563 subsection. [and shall promptly notify the commissioner if such  
564 licensee's net worth falls below the net worth required by this  
565 subsection.]

566 (3) Not later than April 1, 2010, each qualified individual and  
567 branch manager shall have completed the prelicensing education  
568 requirement described in section 9 of this act and passed a written test  
569 that meets the test requirement described in section 9 of this act.

570 (b) The commissioner may issue a mortgage lender license, a  
571 mortgage correspondent lender license, or a mortgage broker license.  
572 Each mortgage lender licensee may also act as a mortgage  
573 correspondent lender and a mortgage broker, and each mortgage  
574 correspondent lender licensee may also act as a mortgage broker. On  
575 and after July 1, 2008, an application for a license as a mortgage lender,  
576 mortgage correspondent lender or mortgage broker office or renewal  
577 of such license shall be filed, in a form prescribed by the commissioner,  
578 with the [Nationwide Mortgage Licensing System and the] system.  
579 Each such form shall contain content as set forth by instruction or  
580 procedure of the commissioner and may be changed or updated as  
581 necessary by the commissioner in order to carry out the purpose of this  
582 chapter, section 36a-21, as amended by this act, and sections 9 and 19  
583 to 22, inclusive, of this act. The applicant shall, at a minimum, furnish  
584 to the system information concerning the identity of the applicant, any  
585 control person, the qualified individual and any branch manager,  
586 including personal history and experience in a form prescribed by the  
587 system and information related to any administrative, civil or criminal  
588 findings by any governmental jurisdiction. The following  
589 supplementary information shall be filed directly with the  
590 commissioner: (1) In the case of an initial application for a license for  
591 the main office, [or renewal of such license,] a financial statement as of  
592 a date not more than twelve months prior to the filing of the  
593 application which reflects tangible net worth, and if such financial  
594 statement is unaudited, the proprietor, general partner, or duly  
595 authorized officer, trustee or member shall swear to its accuracy under  
596 oath before a notary public; (2) a bond as required by section 36a-492,

597 as amended by this act; (3) evidence that the qualified individual or  
598 branch manager meets the experience required by subsection (a) of this  
599 section; and (4) such other information pertaining to the applicant, the  
600 applicant's background, the background of its principals, employees,  
601 and mortgage loan originators, and the applicant's activities as the  
602 commissioner may require. For the purpose of this subsection,  
603 evidence of experience of the qualified individual or branch manager  
604 shall include: (A) A statement specifying the duties and responsibilities  
605 of such person's employment, the term of employment, including  
606 month and year, and the name, address and telephone number of a  
607 supervisor, employer or, if self-employed, a business reference; and (B)  
608 if required by the commissioner, copies of W-2 forms, 1099 tax forms  
609 or, if self-employed, 1120 corporate tax returns, signed letters from the  
610 employer on the employer's letterhead verifying such person's duties  
611 and responsibilities and term of employment including month and  
612 year, and if such person is unable to provide such letters, other proof  
613 satisfactory to the commissioner that such person meets the experience  
614 requirement. The commissioner may conduct a criminal history  
615 records check of the applicant, [of each member, partner, officer or  
616 director of the applicant and of the person with supervisory authority  
617 at the office for which the license is sought, and require the applicant  
618 to submit the fingerprints of such persons as part of the application.  
619 The applicant shall submit such fingerprints for processing with the  
620 Nationwide Mortgage Licensing System, as required] any control  
621 person of the applicant and the qualified individual or branch manager  
622 with supervisory authority at the office for which the license is sought  
623 and require the applicant to submit the fingerprints of such persons  
624 and authorization for such persons to obtain an independent credit  
625 report from a consumer reporting agency, as described in Section  
626 603(p) of the Fair Credit Reporting Act, 15 USC 1681a, as part of the  
627 application.

628 (c) [On and after July 1, 2008, an] (1) An application to license a  
629 person as a mortgage loan originator for a specified office or renewal  
630 of such license shall be filed, in a form prescribed by the commissioner,  
631 with the [Nationwide Mortgage Licensing System The applicant shall

632 submit such fingerprints for processing with the Nationwide Mortgage  
633 Licensing System, as required.] system. Each such form shall contain  
634 content as set forth by instruction or procedure of the commissioner  
635 and may be changed or updated as necessary by the commissioner in  
636 order to carry out the purpose of this chapter, section 36a-21, as  
637 amended by this act, and sections 9 and 19 to 22, inclusive, of this act.  
638 The applicant shall, at a minimum, furnish to the system, in a form  
639 prescribed by the system, information concerning the applicant's  
640 identity, including personal history and experience and information  
641 related to any administrative, civil or criminal findings by any  
642 governmental jurisdiction. Effective April 1, 2010, each applicant for a  
643 mortgage loan originator license shall furnish to the system  
644 fingerprints for submission to the Federal Bureau of Investigation and  
645 any governmental agency or entity authorized to receive such  
646 information for a state, national and international criminal history  
647 background check. Effective November 1, 2010, each applicant shall  
648 furnish authorization for the system and the commissioner to obtain an  
649 independent credit report from a consumer reporting agency, as  
650 described in Section 603(p) of the Fair Credit Reporting Act, 15 USC  
651 1681a.

652 (2) Not later than April 1, 2010, each mortgage loan originator  
653 licensee shall furnish to the system fingerprints for submission to the  
654 Federal Bureau of Investigation and any governmental agency or  
655 entity authorized to receive such information for a state, national and  
656 international criminal history background check. No later than  
657 November 1, 2010, each such licensee shall furnish authorization for  
658 the system and the commissioner to obtain an independent credit  
659 report obtained from a consumer reporting agency described in  
660 Section 603(p) of the Fair Credit Reporting Act, 15 USC 1681a.

661 Sec. 8. Section 36a-489 of the general statutes is repealed and the  
662 following is substituted in lieu thereof (*Effective from passage*):

663 (a) (1) [If the commissioner finds, upon the filing of an application  
664 for a license as a mortgage lender, mortgage correspondent lender or

665 mortgage broker, that the applicant meets the requirements of  
666 subsection (a) of section 36a-488, and that the financial responsibility,  
667 character, reputation, integrity and general fitness of the applicant and  
668 of the partners thereof if the applicant is a partnership, of the members  
669 if the applicant is a limited liability company or association, and of the  
670 officers, directors and principal employees if the applicant is a  
671 corporation, are such as to warrant belief that the business will be  
672 operated soundly and efficiently, in the public interest and consistent  
673 with the purposes of sections 36a-485 to 36a-498a, inclusive, and  
674 sections 36a-760a to 36a-760h, inclusive, the commissioner may  
675 thereupon issue the license. If the commissioner fails to make such  
676 findings, or if the commissioner finds that the applicant has made a  
677 material misstatement in such application, the commissioner shall not  
678 issue a license, and shall notify the applicant of the denial and the  
679 reasons for such denial. Any denial of an application by the  
680 commissioner shall, when applicable, be subject to the provisions of  
681 section 46a-80.] The commissioner shall not issue an initial license for a  
682 mortgage lender, mortgage correspondent lender or mortgage broker  
683 unless the commissioner, at a minimum, finds that: (A) The applicant  
684 meets the requirements of subsection (a) of section 36a-488, as  
685 amended by this act; (B) the applicant, the control persons of the  
686 applicant and the qualified individual or branch manager with  
687 supervisory authority at the office for which the license is sought have  
688 not been convicted of, or pled guilty or nolo contendere to, a felony in  
689 a domestic, foreign or military court during the seven-year period  
690 preceding the date of the application for licensing or at any time  
691 preceding the date of application if such felony involved an act of  
692 fraud, dishonesty, a breach of trust or money laundering, provided  
693 any pardon of a conviction shall not be a conviction for purposes of  
694 this subdivision; (C) the applicant demonstrates that the financial  
695 responsibility, character and general fitness of the applicant, the  
696 control persons of the applicant and the qualified individual or branch  
697 manager having supervisory authority over the office for which the  
698 license is sought are such as to command the confidence of the  
699 community and to warrant a determination that the applicant will

700 operate honestly, fairly and efficiently within the purposes of this  
701 chapter; (D) the applicant has met the surety bond requirement under  
702 section 36a-492, as amended by this act; and (E) the applicant has not  
703 made a material misstatement in the application. If the commissioner  
704 fails to make such findings, the commissioner shall not issue a license,  
705 and shall notify the applicant of the denial and the reasons for such  
706 denial.

707 (2) (A) The minimum standards for license renewal for a mortgage  
708 lender, mortgage correspondent lender or mortgage broker shall  
709 include the following: (i) The applicant continues to meet the  
710 minimum standards under subdivision (1) of this subsection; (ii)  
711 effective April 1, 2010, each qualified person and branch manager has  
712 completed the preclicensing education requirement described in section  
713 9 of this act and passed a written test that meets the test requirement  
714 described in section 9 of this act, or has satisfied the annual continuing  
715 education requirements described in section (d) of section 9 of this act,  
716 as applicable; and (iii) the mortgage lender, mortgage correspondent  
717 lender or mortgage broker has paid all required fees for renewal of the  
718 license.

719 (B) The license of a mortgage lender, mortgage correspondent  
720 lender or mortgage broker failing to satisfy the minimum standards for  
721 license renewal shall expire. The commissioner may adopt procedures  
722 for the reinstatement of expired licenses consistent with the standards  
723 established by the system.

724 (b) (1) [Upon the filing of an application for a mortgage loan  
725 originator license, the commissioner shall license the mortgage loan  
726 originator named in the application unless the commissioner finds that  
727 such applicant or mortgage loan originator has made a material  
728 misstatement in the application or that the financial responsibility,  
729 character, reputation, integrity and general fitness of such mortgage  
730 loan originator are not such as to warrant belief that granting such  
731 license would be in the public interest and consistent with the  
732 purposes of sections 36a-485 to 36a-498a, inclusive, and sections 36a-

733 760a to 36a-760h, inclusive. If the commissioner denies an application  
734 for a mortgage loan originator license, the commissioner shall notify  
735 the applicant and the proposed mortgage loan originator of the denial  
736 and the reasons for such denial. Any denial of an application by the  
737 commissioner shall, when applicable, be subject to the provisions of  
738 section 46a-80.] The commissioner shall not issue an initial license for a  
739 mortgage loan originator unless the commissioner, at a minimum,  
740 finds that the applicant has: (A) Never had a mortgage loan originator  
741 license revoked in any governmental jurisdiction, except that a  
742 subsequent formal vacating of such revocation shall not be deemed a  
743 revocation; (B) not been convicted of, or pled guilty or nolo contendere  
744 to, a felony in a domestic, foreign or military court during the seven-  
745 year period preceding the date of the application for licensing or at any  
746 time preceding such date of application if such felony involved an act  
747 of fraud, dishonesty, a breach of trust, or money laundering, provided  
748 any pardon of a conviction shall not be a conviction for purposes of  
749 this subdivision; (C) demonstrated financial responsibility, character  
750 and general fitness so as to command the confidence of the community  
751 and to warrant a determination that the mortgage loan originator will  
752 operate honestly, fairly and efficiently within the purpose of this  
753 chapter; (D) effective April 1, 2010, completed the prelicensing  
754 education requirement described in section 9 of this act and passed a  
755 written test that meets the test requirement described in section 9 of  
756 this act; (E) effective July 31, 2010, met the surety bond requirement  
757 under section 36a-492, as amended by this act; and (F) not made a  
758 material misstatement in the application. If the commissioner denies  
759 an application for a mortgage loan originator license, the commissioner  
760 shall notify the applicant and may notify the sponsor or any other  
761 person the commissioner deems appropriate of the denial and the  
762 reasons for such denial.

763 (2) (A) The minimum standards for license renewal for a mortgage  
764 loan originator shall include the following: (i) The mortgage loan  
765 originator continues to meet the minimum standards for license  
766 issuance under subdivision (1) of this subsection; (ii) the mortgage loan  
767 originator has satisfied the annual continuing education requirements



768 described in subsection (d) of section 9 of this act; and (iii) the  
769 mortgage loan originator has paid all required fees for renewal of the  
770 license.

771 (B) The license of a mortgage loan originator that fails to satisfy the  
772 minimum standards for license renewal shall expire. The  
773 commissioner may adopt procedures for the reinstatement of expired  
774 licenses consistent with the standards established by the system.

775 (3) No later than April 1, 2010, each mortgage loan originator  
776 licensee shall have completed the prelicensing education requirement  
777 described in section 9 of this act and passed a written test that meets  
778 the test requirement described in section 9 of this act, provided a  
779 mortgage loan originator licensee who was licensed as of the  
780 enactment of this act shall have completed such prelicensing education  
781 requirement and passed such written test not later than October 31,  
782 2010.

783 (c) For purposes of this section, a person has shown that such  
784 person is not financially responsible when such person has shown a  
785 disregard in the management of such person's own financial condition.  
786 A determination that a person has not shown financial responsibility  
787 may include, but is not limited to: (1) Current outstanding judgments,  
788 except judgments solely as a result of medical expenses; (2) current  
789 outstanding tax liens or other government liens and filings; (3)  
790 foreclosures during the three years preceding the date of application or  
791 the date of evaluation for renewal of a license; or (4) a pattern of  
792 seriously delinquent accounts within the past three years.

793 Sec. 9. (NEW) (*Effective from passage*) (a) (1) In order to meet the  
794 prelicensing education and testing requirement under section 36a-489  
795 of the general statutes, as amended by this act, a person shall complete  
796 at least twenty hours of education approved in accordance with  
797 subdivision (2) of this subsection, which shall include at least (A) three  
798 hours of instruction on relevant federal law and regulations; (B) three  
799 hours of ethics, including instruction on fraud, consumer protection  
800 and fair lending issues; and (C) two hours of training related to

801 lending standards for the nontraditional mortgage product  
802 marketplace.

803 (2) For purposes of subdivision (1) of this subsection, prelicensing  
804 education courses shall be reviewed and approved by the system  
805 based upon reasonable standards. Review and approval of a  
806 prelicensing education course shall include review and approval of the  
807 course provider.

808 (3) Nothing in this subsection shall preclude any prelicensing  
809 education course, as approved by the system, that is provided by the  
810 employer of the applicant or an entity which is affiliated with the  
811 applicant by an agency contract, or any subsidiary or affiliate of such  
812 employer or entity.

813 (4) Prelicensing education may be offered either in a classroom,  
814 online or by any other means approved by the system.

815 (5) A person who has successfully completed prelicensing education  
816 requirements listed in subdivision (1) of this subsection in another  
817 state shall be granted credit towards completion of the prelicensing  
818 requirements in this state, provided such out-of-state prelicensing  
819 education requirements are approved by the system.

820 (6) A person who was licensed under sections 36a-485 to 36a-498a,  
821 inclusive, of the general statutes, as amended by this act, or under  
822 section 36a-534b of the general statutes, as amended by this act, prior  
823 to the effective date of this section, and who is applying for a license  
824 renewal subsequent to the effective date of this section and the  
825 effective dates of prelicensing and testing requirements under section  
826 36a-489 of the general statutes, as amended by this act, must  
827 demonstrate that such person has completed all of the continuing  
828 education requirements for the year in which the license was last held.

829 (b) (1) In order to meet the written test requirement under section  
830 36a-489 of the general statutes, as amended by this act, an individual  
831 shall pass, in accordance with the standards established under this

832 subsection, a qualified written test developed by the system and  
833 administered by a test provider approved by the system based upon  
834 reasonable standards.

835 (2) A written test shall not be treated as a qualified written test for  
836 purposes of subdivision (1) of this subsection unless the test  
837 adequately measures the applicant's knowledge and comprehension in  
838 appropriate subject areas, including ethics, federal law and regulation  
839 pertaining to mortgage origination, state law and regulation pertaining  
840 to mortgage origination, and federal and state law and regulation,  
841 including instruction on fraud, consumer protection, the  
842 nontraditional mortgage marketplace and fair lending issues.

843 (3) Nothing in this subsection shall prohibit a test provider  
844 approved by the system from providing a test at the location of the  
845 employer of the applicant, any subsidiary or affiliate of the employer  
846 of the applicant or any entity with which the applicant holds an  
847 exclusive arrangement to conduct the business of a mortgage loan  
848 originator.

849 (4) (A) An individual shall not be considered to have passed a  
850 qualified written test unless the individual achieves a test score of not  
851 less than seventy-five per cent correct answers to questions.

852 (B) An individual may retake a test three consecutive times with  
853 each consecutive taking occurring at least thirty days after the  
854 preceding test. After failing three consecutive tests, an individual shall  
855 wait at least six months before taking the test again.

856 (c) A licensed mortgage lender, mortgage correspondent lender,  
857 mortgage broker or mortgage loan originator who fails to maintain a  
858 valid license for a period of five years or longer, not taking into  
859 account any time during which such individual is a registered  
860 mortgage loan originator, shall retake the test.

861 (d) (1) In order to meet the annual continuing education  
862 requirements under subdivision (2) of subsection (b) of section 36a-489

863 of the general statutes, as amended by this act, a licensed mortgage  
864 lender, mortgage correspondent lender, mortgage broker or mortgage  
865 loan originator shall complete at least eight hours of education  
866 approved in accordance with subdivision (2) of this subsection. Such  
867 courses shall include at least (A) three hours of instruction on relevant  
868 federal law and regulation; (B) two hours of ethics, including  
869 instruction on fraud, consumer protection and fair lending issues; and  
870 (C) two hours of training related to lending standards for the  
871 nontraditional mortgage product marketplace.

872 (2) For purposes of subdivision (1) of this subsection, continuing  
873 education courses shall be reviewed and approved by the system  
874 based upon reasonable standards. Review and approval of a  
875 continuing education course shall include review and approval of the  
876 course provider.

877 (3) Nothing in this subsection shall preclude any education course  
878 approved by the system that is provided by the employer of the  
879 licensee or an entity which is affiliated with the licensee by an agency  
880 contract, or any subsidiary or affiliate of such employer or entity.

881 (4) Continuing education may be offered either in a classroom,  
882 online or by any other means approved by the system.

883 (5) A licensee may only receive credit for a continuing education  
884 course in the year in which the course is taken, and may not take the  
885 same approved course in the same or successive years to meet the  
886 annual requirements for continuing education.

887 (6) A licensee who is an instructor of an approved continuing  
888 education course may receive credit for the licensee's own annual  
889 continuing education requirement at the rate of two hours credit for  
890 every one hour taught.

891 (7) A person who has successfully completed the education  
892 requirements listed in subdivision (1) of this subsection in another  
893 state shall be granted credit towards completion of the education

894 requirements in this state, provided such out-of-state education  
895 requirements are approved by the system.

896 (8) A licensed mortgage loan originator who subsequently becomes  
897 unlicensed must complete the continuing education requirements for  
898 the last year in which the license was held prior to issuance of an initial  
899 or renewed license.

900 (9) A person who meets the requirements of subparagraphs (A)(i)  
901 and (A)(iii) of subdivision (2) of subsection (a) or (b) of section 36a-489  
902 of the general statutes, as amended by this act, may compensate for  
903 any deficiency in continuing education requirements pursuant to  
904 regulations adopted by the commissioner.

905 (e) For purposes of this section "nontraditional mortgage product"  
906 means any mortgage product other than a thirty-year fixed rate  
907 mortgage, and "system" has the same meaning as provided in section  
908 36a-485 of the general statutes, as amended by this act.

909 Sec. 10. Section 36a-490 of the general statutes is repealed and the  
910 following is substituted in lieu thereof (*Effective from passage*):

911 (a) A mortgage lender, mortgage correspondent lender and  
912 mortgage broker license shall not be transferable or assignable. No  
913 licensee may use any name other than its legal name or a fictitious  
914 name approved by the commissioner, provided such licensee may not  
915 use its legal name if the commissioner disapproves use of such name.  
916 Any licensee who intends to permanently cease engaging in the  
917 business of making residential mortgage loans or acting as a mortgage  
918 broker at any time during a license period for any cause, including, but  
919 not limited to, bankruptcy, license revocation or voluntary dissolution,  
920 shall file a request to surrender [of] the license for each office at which  
921 the licensee intends to cease to do business, on the [Nationwide  
922 Mortgage Licensing System] system, not later than fifteen days after  
923 the date of such cessation, provided this requirement shall not apply  
924 when a license has been suspended pursuant to section 36a-51. No  
925 surrender shall be effective until accepted by the commissioner.

926 (b) A mortgage lender, mortgage correspondent lender or mortgage  
927 broker licensee may change the name of the licensee or address of the  
928 office specified on the most recent filing with the [Nationwide  
929 Mortgage Licensing System] system if (1) at least thirty calendar days  
930 prior to such change, the licensee files such change with the  
931 [Nationwide Mortgage Licensing System] system and provides,  
932 directly to the commissioner, a bond rider or endorsement to the  
933 surety bond on file with the commissioner that reflects the new name  
934 or address of the office, and (2) the commissioner does not disapprove  
935 such change, in writing, or request further information within such  
936 thirty-day period. The licensee shall promptly file any change in the  
937 information most recently submitted in connection with the license  
938 with the [Nationwide Mortgage Licensing System] system or, if the  
939 information cannot be filed on the [Nationwide Mortgage Licensing  
940 System] system, directly notify the commissioner, in writing, of [any  
941 other] such change in the information. [provided in the most recent  
942 filing with the Nationwide Mortgage Licensing System.]

943 (c) The mortgage lender, mortgage correspondent lender or  
944 mortgage broker licensee shall promptly file with the [Nationwide  
945 Mortgage Licensing System] system or, if the information cannot be  
946 filed on the [Nationwide Mortgage Licensing System] system, directly  
947 notify the commissioner, in writing, of the occurrence of any of the  
948 following developments:

949 (1) Filing for bankruptcy, or the consummation of a corporate  
950 restructuring, of the licensee;

951 (2) Filing of a criminal indictment against the licensee in any way  
952 related to the lending or brokerage activities of the licensee, or  
953 receiving notification of the filing of any criminal felony indictment or  
954 felony conviction of any of the licensee's officers, directors, members,  
955 partners or shareholders owning ten per cent or more of the  
956 outstanding stock;

957 (3) Receiving notification of the institution of license denial, cease  
958 and desist, suspension or revocation procedures, or other formal or

959 informal regulatory action by any governmental agency against the  
960 licensee and the reasons therefor;

961 (4) Receiving notification of the initiation of any action by the  
962 Attorney General or the attorney general of any other state and the  
963 reasons therefor;

964 (5) Receiving notification of a material adverse action with respect  
965 to any existing line of credit or warehouse credit agreement;

966 (6) Suspension or termination of the licensee's status as an approved  
967 seller or servicer by the Federal National Mortgage Association,  
968 Federal Home Loan Mortgage Corporation or Government National  
969 Mortgage Association;

970 (7) Exercise of recourse rights by investors or subsequent assignees  
971 of residential mortgage loans if such loans for which the recourse  
972 rights are being exercised, in the aggregate, exceed the licensee's net  
973 worth exclusive of real property and fixed assets;

974 (8) Receiving notification of filing for bankruptcy of any of the  
975 licensee's officers, directors, members, partners or shareholders  
976 owning ten per cent or more of the outstanding stock of the licensee; or

977 [(9) Any proposed change in control in the ownership of the  
978 licensee, or among the officers, directors, members or partners of the  
979 licensee on a form provided by the commissioner. The commissioner  
980 may thereupon cause such investigation to be made as he deems  
981 necessary, as if the licensee were applying for an initial license. In the  
982 case of a corporation, "change in control" means a change of ownership  
983 by a person or group acting in concert to acquire ten per cent or more  
984 of any class of voting securities, or the ability of a person or group  
985 acting in concert to elect a majority of the directors or otherwise effect  
986 a change in policy of the corporation.]

987 (9) A decrease in the net worth required by subsection (a) of section  
988 36a-488, as amended by this act.

989 (d) Each mortgage loan originator licensee shall promptly file with  
990 the [Nationwide Mortgage Licensing System] system or, if the  
991 information cannot be filed on the [Nationwide Mortgage Licensing  
992 System] system, directly notify the commissioner, in writing, of the  
993 occurrence of any of the following developments:

994 (1) Filing for bankruptcy of the mortgage loan originator licensee;

995 (2) Filing of a criminal indictment against the mortgage loan  
996 originator licensee;

997 (3) Receiving notification of the institution of license or registration  
998 denial, cease and desist, suspension or revocation procedures, or other  
999 formal or informal regulatory action by any governmental agency  
1000 against the mortgage loan originator licensee and the reasons therefor;  
1001 or

1002 (4) Receiving notification of the initiation of any action against the  
1003 mortgage loan originator licensee by the Attorney General or the  
1004 attorney general of any other state and the reasons therefor.

1005 (e) Each mortgage lender, mortgage correspondent lender,  
1006 mortgage broker and mortgage loan originator license shall remain in  
1007 force and effect until it has been surrendered, revoked, suspended or  
1008 expires, or is no longer effective, in accordance with the provisions of  
1009 sections 36a-485 to 36a-498a, inclusive, as amended by this act, and  
1010 sections 36a-534a and 36a-534b, as amended by this act.

1011 Sec. 11. Section 36a-491 of the general statutes is repealed and the  
1012 following is substituted in lieu thereof (*Effective from passage*):

1013 (a) (1) The expiration date of any mortgage lender, mortgage  
1014 correspondent lender and mortgage broker license that expires on  
1015 September 30, 2008, shall be extended to the close of business on  
1016 December 31, 2008. On and after July 1, 2008, each mortgage lender,  
1017 mortgage correspondent lender, [or] mortgage broker and mortgage  
1018 originator license shall expire at the close of business on December  
1019 thirty-first of the year in which it is approved, unless such license is



1020 renewed, and provided any such license that is approved on or after  
1021 November first shall expire at the close of business on December  
1022 thirty-first of the year following the year in which it is approved. An  
1023 application for renewal of a license shall be filed between November  
1024 first and December thirty-first of the year in which the license expires,  
1025 [, provided a licensee may file a renewal application not later than  
1026 March first of the following year together with a late fee of one  
1027 hundred dollars. Any such filing after December thirty-first shall be  
1028 deemed timely and sufficient for purposes of subsection (b) of section  
1029 4-182.] Each applicant for [a] an initial license or renewal of a license as  
1030 a mortgage lender or mortgage correspondent lender shall pay to the  
1031 [Nationwide Mortgage Licensing System] system any required fees or  
1032 charges and a license fee of eight hundred dollars, and each applicant  
1033 for an initial or renewal license as a mortgage broker shall pay to the  
1034 [Nationwide Mortgage Licensing System] system any required fees or  
1035 charges and a license fee of four hundred dollars, provided each  
1036 mortgage lender or mortgage correspondent lender licensee who is a  
1037 licensee on September 30, 2008, who submits a renewal application  
1038 shall, at the time of making such application, pay to the [Nationwide  
1039 Mortgage Licensing System] system any required fees or charges and a  
1040 license fee of nine hundred dollars and each mortgage broker who was  
1041 a licensee on June 30, 2008, who submits a renewal application shall, at  
1042 the time of making such application, pay to the [Nationwide Mortgage  
1043 Licensing System] system any required fees or charges and a license  
1044 fee of four hundred fifty dollars.

1045 (2) [Each mortgage loan originator license shall expire at such time  
1046 as the license of the mortgage lender, mortgage correspondent lender  
1047 or mortgage broker that employs or retains the mortgage loan  
1048 originator expires, unless such mortgage loan originator license is  
1049 renewed. Each mortgage lender, mortgage correspondent lender or  
1050 mortgage broker applicant and each mortgage lender licensee,  
1051 mortgage correspondent lender licensee or mortgage broker licensee  
1052 that files an application] Effective November 1, 2009, each applicant for  
1053 [a] an initial license or renewal of a license as a mortgage loan  
1054 originator [license] shall pay to the [Nationwide Mortgage Licensing

1055 System] system any required fees or charges and a license fee of [one]  
1056 three hundred dollars. [for each mortgage loan originator, provided  
1057 each mortgage lender, mortgage correspondent lender or mortgage  
1058 broker who is a licensee on September 30, 2008, who submits a renewal  
1059 application for a mortgage loan originator shall, at the time of making  
1060 such application, pay to the Nationwide Mortgage Licensing System  
1061 any required fees or charges and a license fee of one hundred twenty-  
1062 five dollars. On and after January 1, 2010, each mortgage lender,  
1063 mortgage correspondent lender or mortgage broker filing an  
1064 application for a mortgage loan originator license shall pay a license  
1065 fee of one hundred dollars for each mortgage loan originator and any  
1066 required fees or charges to the Nationwide Mortgage Licensing  
1067 System.]

1068 (b) All fees paid pursuant to this section, including fees paid in  
1069 connection with an application that is denied or withdrawn prior to  
1070 the issuance of the license, shall be nonrefundable, provided [such  
1071 fees] any license fee paid by an originator for a license that is not  
1072 sponsored by a mortgage lender, mortgage correspondent lender or  
1073 mortgage broker may be refundable. No fee paid pursuant to this  
1074 section shall be prorated if the license is surrendered, revoked or  
1075 suspended prior to the expiration of the period for which it was  
1076 approved.

1077 Sec. 12. Section 36a-492 of the general statutes is repealed and the  
1078 following is substituted in lieu thereof (*Effective from passage*):

1079 (a) (1) No mortgage lender, mortgage correspondent lender or  
1080 mortgage broker license, and no renewal thereof, shall be granted  
1081 unless the applicant has filed a bond with the commissioner written by  
1082 a surety authorized to write such bonds in this state, in the sum of  
1083 forty thousand dollars, the form of which shall be approved by the  
1084 Attorney General. [, provided on and after August 1, 2009, the bond  
1085 shall be in the sum of eighty thousand dollars. Such bond shall be  
1086 conditioned upon such licensee faithfully performing any and all  
1087 written agreements or commitments with or for the benefit of

1088 borrowers and prospective borrowers, truly and faithfully accounting  
1089 for all funds received from a borrower or prospective borrower by the  
1090 licensee in the licensee's capacity as a mortgage lender, mortgage  
1091 correspondent lender or a mortgage broker, and conducting such  
1092 mortgage business consistent with the provisions of sections 36a-485 to  
1093 36a-498a, inclusive. Any borrower or prospective borrower who may  
1094 be damaged by failure to perform any written agreements or  
1095 commitments, or by the wrongful conversion of funds paid by a  
1096 borrower or prospective borrower to a licensee, may proceed on such  
1097 bond against the principal or surety thereon, or both, to recover  
1098 damages. Commencing August 1, 2009, any borrower or prospective  
1099 borrower who may be damaged by a licensee's failure to satisfy a  
1100 judgment against the licensee arising from the making or brokering of  
1101 a nonprime home loan, as defined in section 36a-760, may proceed on  
1102 such bond against the principal or surety thereon, or both, to recover  
1103 the amount of the judgment. The commissioner may proceed on such  
1104 bond against the principal or surety thereon, or both, to collect any  
1105 civil penalty imposed upon the licensee pursuant to subsection (a) of  
1106 section 36a-50 and any unpaid costs of examination of the licensee as  
1107 determined pursuant to section 36a-65. The proceeds of the bond, even  
1108 if commingled with other assets of the licensee, shall be deemed by  
1109 operation of law to be held in trust for the benefit of such claimants  
1110 against the licensee in the event of bankruptcy of the licensee and shall  
1111 be immune from attachment by creditors and judgment creditors. The  
1112 bond shall run concurrently with the period of the license granted to  
1113 the applicant, and the aggregate liability under the bond shall not  
1114 exceed the penal sum of the bond.] Effective July 31, 2010, the penal  
1115 sum of the bond shall be maintained in an amount that reflects the  
1116 dollar amount of the loans originated by the mortgage lender,  
1117 mortgage correspondent lender or mortgage broker, as determined by  
1118 the commissioner.

1119 (2) Effective July 31, 2010, each person licensed as a mortgage loan  
1120 originator shall be covered by a surety bond in accordance with this  
1121 section, provided such coverage shall be provided through the bond of  
1122 the mortgage lender, mortgage correspondent lender or mortgage

1123 broker who sponsors such mortgage loan originator. The penal sum of  
1124 the bond shall be maintained in an amount that reflects the dollar  
1125 amount of loans originated by the mortgage loan originator, as  
1126 determined by the commissioner. The commissioner may adopt  
1127 regulations in accordance with chapter 54 with respect to the  
1128 requirements for such surety bonds.

1129 (b) The bond required by subsection (a) of this section shall be  
1130 conditioned upon such licensee faithfully performing any and all  
1131 written agreements or commitments with or for the benefit of  
1132 borrowers and prospective borrowers, truly and faithfully accounting  
1133 for all funds received from a borrower or prospective borrower by the  
1134 licensee in the licensee's capacity as a mortgage lender, mortgage  
1135 correspondent lender or a mortgage broker or, effective July 31, 2010, a  
1136 mortgage loan originator, and conducting such mortgage business  
1137 consistent with the provisions of sections 36a-485 to 36a-498a,  
1138 inclusive, as amended by this act, and sections 36a-534a and 36a-534b.  
1139 Any borrower or prospective borrower who may be damaged by  
1140 failure to perform any written agreements or commitments, or by the  
1141 wrongful conversion of funds paid by a borrower or prospective  
1142 borrower to a licensee, may proceed on such bond against the  
1143 principal or surety thereon, or both, to recover damages. Commencing  
1144 August 1, 2009, any borrower or prospective borrower who may be  
1145 damaged by a mortgage lender, mortgage correspondent lender,  
1146 mortgage broker or mortgage loan originator licensee's failure to  
1147 satisfy a judgment against the licensee arising from the making or  
1148 brokering of a nonprime home loan, as defined in section 36a-760, may  
1149 proceed on such bond against the principal or surety thereon, or both,  
1150 to recover the amount of the judgment. The commissioner may  
1151 proceed on such bond against the principal or surety thereon, or both,  
1152 to collect any civil penalty imposed upon the licensee pursuant to  
1153 subsection (a) of section 36a-50 and any unpaid costs of examination of  
1154 the licensee as determined pursuant to section 36a-65. The proceeds of  
1155 the bond, even if commingled with other assets of the licensee, shall be  
1156 deemed by operation of law to be held in trust for the benefit of such  
1157 claimants against the licensee in the event of bankruptcy of the licensee

1158 and shall be immune from attachment by creditors and judgment  
1159 creditors. The bond shall run concurrently with the period of the  
1160 license granted to the applicant, and the aggregate liability under the  
1161 bond shall not exceed the penal sum of the bond. The licensee shall  
1162 notify the commissioner of the commencement of an action on the  
1163 licensee's bond. When an action is commenced on a licensee's bond,  
1164 the commissioner may require the filing of a new bond and  
1165 immediately on recovery on any action on the bond, the licensee shall  
1166 file a new bond.

1167 [(b)] (c) The surety company shall have the right to cancel the bond  
1168 at any time by a written notice to the licensee stating the date  
1169 cancellation shall take effect. Such notice shall be sent by certified mail  
1170 to the licensee at least thirty days prior to the date of cancellation. A  
1171 surety bond shall not be cancelled unless the surety company notifies  
1172 the commissioner in writing not less than thirty days prior to the  
1173 effective date of cancellation.

1174 Sec. 13. Subsection (a) of section 36a-493 of the general statutes is  
1175 repealed and the following is substituted in lieu thereof (*Effective from*  
1176 *passage*):

1177 (a) Each mortgage lender, mortgage correspondent lender and  
1178 mortgage broker licensee shall maintain adequate records of each  
1179 residential mortgage loan transaction at the office named in the license,  
1180 or, if requested by the commissioner, shall make such records available  
1181 at such office or send such records to the commissioner by registered  
1182 or certified mail, return receipt requested, or by any express delivery  
1183 carrier that provides a dated delivery receipt, not later than five  
1184 business days after requested by the commissioner to do so. Upon  
1185 request, the commissioner may grant a licensee additional time to  
1186 make such records available or send them to the commissioner. Such  
1187 records shall provide the following information: (1) A copy of any  
1188 disclosures required under part III of chapter 669; (2) whether the  
1189 licensee acted as a mortgage lender, a mortgage correspondent lender,  
1190 a mortgage broker, a mortgage lender and a mortgage broker, or a

1191 mortgage correspondent lender and a mortgage broker; (3) if the  
1192 licensee is acting as a mortgage lender or mortgage correspondent  
1193 lender, and retains the residential mortgage loan or receives payments  
1194 thereon, an adequate loan history for those loans retained or upon  
1195 which payments are received, itemizing the amount and date of each  
1196 payment and the unpaid balance at all times; (4) the purpose for which  
1197 the loan was made; (5) the original or an exact copy of the note, loan  
1198 agreement or other evidence of indebtedness and mortgage deed; (6) a  
1199 statement signed by the borrower acknowledging the receipt of such  
1200 statement which discloses the full amount of any fee, commission or  
1201 consideration paid to the mortgage lender, mortgage correspondent  
1202 lender and mortgage broker for all services in connection with the  
1203 origination and settlement of the residential mortgage loan; (7) the  
1204 name and address of the mortgage lender, mortgage correspondent  
1205 lender and the mortgage broker, if any, involved in the loan  
1206 transaction; (8) a copy of the initial and a copy of the final residential  
1207 mortgage loan application taken from the borrower; and (9) a copy of  
1208 all information used in evaluating the application.

1209 Sec. 14. Section 36a-494 of the general statutes is repealed and the  
1210 following is substituted in lieu thereof (*Effective from passage*):

1211 (a) (1) The commissioner may suspend, revoke or refuse to renew  
1212 any mortgage lender, mortgage correspondent lender or mortgage  
1213 broker license or take any other action, in accordance with the  
1214 provisions of section 36a-51, for any reason which would be sufficient  
1215 grounds for the commissioner to deny an application for such license  
1216 under sections 36a-485 to 36a-498a, inclusive, as amended by this act,  
1217 or if the commissioner finds that the licensee, [or any proprietor,  
1218 director, officer, member, partner, shareholder] any control person, the  
1219 qualified individual or branch manager with supervisory authority,  
1220 trustee, employee or agent of such licensee has done any of the  
1221 following: (A) Made any material misstatement in the application; (B)  
1222 committed any fraud, misappropriated funds or misrepresented,  
1223 concealed, suppressed, intentionally omitted or otherwise intentionally  
1224 failed to disclose any of the material particulars of any residential

1225 mortgage loan transaction, including disclosures required by  
1226 subdivision (6) of subsection (a) of section 36a-493, as amended by this  
1227 act, or part III of chapter 669 or regulations adopted pursuant thereto,  
1228 to anyone entitled to such information; (C) violated any of the  
1229 provisions of this title or of any regulations adopted pursuant thereto,  
1230 or any other law or regulation applicable to the conduct of its business;  
1231 or (D) failed to perform any agreement with a licensee or a borrower.

1232 (2) The commissioner may suspend, revoke or refuse to renew any  
1233 mortgage loan originator license or take any other action, in  
1234 accordance with the provisions of section 36a-51, for any reason which  
1235 would be sufficient grounds for the commissioner to deny an  
1236 application for such license under sections 36a-485 to 36a-498a,  
1237 inclusive, as amended by this act, or if the commissioner finds that the  
1238 licensee has committed any fraud, misappropriated funds,  
1239 misrepresented, concealed, suppressed, intentionally omitted or  
1240 otherwise intentionally failed to disclose any of the material particulars  
1241 of any residential mortgage loan transaction or has violated any of the  
1242 provisions of this title or of any regulations adopted pursuant to such  
1243 title or any other law or regulation applicable to the conduct of such  
1244 licensee's business.

1245 (b) Whenever it appears to the commissioner that any person has  
1246 violated, is violating or is about to violate any of the provisions of  
1247 sections 36a-485 to 36a-498a, inclusive, as amended by this act, or any  
1248 regulation adopted pursuant thereto, or any licensee has failed to  
1249 perform any agreement with a borrower, committed any fraud,  
1250 misappropriated funds or misrepresented, concealed, suppressed,  
1251 intentionally omitted or otherwise intentionally failed to disclose any  
1252 of the material particulars of any residential mortgage loan transaction,  
1253 including disclosures required by subdivision (6) of subsection (a) of  
1254 section 36a-493, as amended by this act, or part III of chapter 669 or  
1255 regulations adopted pursuant thereto, to anyone entitled to such  
1256 information, the commissioner may take action against such person or  
1257 licensee in accordance with sections 36a-50 and 36a-52.

1258 (c) (1) Whenever the commissioner finds as the result of an  
1259 investigation that any person conducting business under sections 36a-  
1260 485 to 36a-498a, inclusive, as amended by this act: (A) Has violated  
1261 said sections or any regulation or order issued thereunder; (B) has been  
1262 convicted of a felony that would preclude licensing under said  
1263 sections; or (C) no longer demonstrates the financial responsibility,  
1264 character and general fitness to command the confidence of the  
1265 community and to warrant a determination that the person subject to  
1266 said sections will operate honestly, fairly and efficiently, the  
1267 commissioner may send notice to such person by registered or certified  
1268 mail, return receipt requested, or by any express delivery carrier that  
1269 provides a dated delivery receipt. The notice shall be deemed received  
1270 by such person on the earlier of the date of actual receipt or seven days  
1271 after mailing or sending. Any such notice shall include: (i) A statement  
1272 of the time, place and nature of the hearing; (ii) a statement of the legal  
1273 authority and jurisdiction under which the hearing is to be held; (iii) a  
1274 reference to the particular sections of the general statutes, regulations  
1275 or orders alleged to have been violated; (iv) a short and plain  
1276 statement of the matters asserted; and (v) a statement indicating that  
1277 such person may file a written request for a hearing on the matters  
1278 asserted not later than fourteen days after receipt of the notice. If the  
1279 commissioner finds that the protection of borrowers requires  
1280 immediate action, the commissioner may suspend any such person  
1281 from office and require such person to take or refrain from taking such  
1282 action as in the opinion of the commissioner will effectuate the  
1283 purposes of this subsection, by incorporating a finding to that effect in  
1284 such notice. The suspension or prohibition shall become effective upon  
1285 receipt of such notice and, unless stayed by a court, shall remain in  
1286 effect until the entry of a permanent order or the dismissal of the  
1287 matters asserted.

1288 (2) If a hearing is requested within the time specified in the notice,  
1289 the commissioner shall hold a hearing upon the matters asserted in the  
1290 notice unless such person fails to appear at the hearing. After the  
1291 hearing, if the commissioner finds that any of the grounds set forth in  
1292 subparagraphs (A) to (C), inclusive, of subdivision (1) of this



1293 subsection exist with respect to such person, the commissioner may  
1294 order the removal of such person from office and from any  
1295 employment in the mortgage business in this state. If such person fails  
1296 to appear at the hearing, the commissioner may order the removal of  
1297 such person from office and from employment in the mortgage  
1298 business in this state.

1299 (d) The commissioner may issue a temporary order to cease  
1300 business under a license if the commissioner determines that such  
1301 license was issued erroneously. The commissioner shall give the  
1302 licensee an opportunity for a hearing on such action in accordance  
1303 with section 36a-52. Such temporary order shall become effective upon  
1304 receipt by the licensee and, unless set aside or modified by a court,  
1305 shall remain in effect until the effective date of a permanent order or  
1306 dismissal of the matters asserted in the notice.

1307 Sec. 15. Section 36a-496 of the general statutes is repealed and the  
1308 following is substituted in lieu thereof (*Effective from passage*):

1309 No person engaged in the business of making residential mortgage  
1310 loans in this state, whether licensed in accordance with the provisions  
1311 of sections 36a-485 to 36a-498a, inclusive, as amended by this act, or  
1312 exempt from licensing, shall accept applications or referral of  
1313 applicants from, or pay a fee to, any mortgage broker or mortgage loan  
1314 originator who is required to be licensed under said sections but was  
1315 not, as of the time of the performance of such mortgage broker's or  
1316 mortgage loan originator's services in connection with loans made or  
1317 to be made by the mortgage lender or mortgage correspondent lender,  
1318 licensed to act as such by the commissioner, if the mortgage lender or  
1319 mortgage correspondent lender has actual knowledge that the  
1320 mortgage broker or mortgage loan originator was not licensed by the  
1321 commissioner.

1322 Sec. 16. Section 36a-497 of the general statutes is repealed and the  
1323 following is substituted in lieu thereof (*Effective from passage*):

1324 No mortgage lender licensee, mortgage correspondent lender

1325 licensee or mortgage broker licensee shall:

1326 (1) Advertise or cause to be advertised in this state, any residential  
1327 mortgage loan in which such person intends to act only as a mortgage  
1328 broker unless the advertisement includes the following statement,  
1329 clearly and conspicuously expressed: MORTGAGE BROKER ONLY,  
1330 NOT A MORTGAGE LENDER OR MORTGAGE CORRESPONDENT  
1331 LENDER; or

1332 (2) In connection with an advertisement in this state, use (A) a  
1333 simulated check; (B) a comparison between the loan payments under  
1334 the residential mortgage loan offered and the loan payments under a  
1335 hypothetical loan or extension of credit, unless the advertisement  
1336 includes, with respect to both the hypothetical loan or extension of  
1337 credit and the residential mortgage loan being offered, the interest rate,  
1338 the loan balance, the total amount of finance charges, the total number  
1339 of payments and the monthly payment amount that would be required  
1340 to pay off the outstanding loan balance shown; (C) representations  
1341 such as "verified as eligible", "eligible", "preapproved", "prequalified"  
1342 or similar words or phrases, without also disclosing, in immediate  
1343 proximity to and in similar size print, language which sets forth  
1344 prerequisites to qualify for the residential mortgage loan, including,  
1345 but not limited to, income verification, credit check, and property  
1346 appraisal or evaluation; or (D) any words or symbols in the  
1347 advertisement or on the envelope containing the advertisement that  
1348 give the appearance that the mailing was sent by a government  
1349 agency.

1350 Sec. 17. Subsections (a) to (g), inclusive, of section 36a-498 of the  
1351 general statutes are repealed and the following is substituted in lieu  
1352 thereof (*Effective from passage*):

1353 (a) Except as provided in subsection (c) of this section, every  
1354 advance fee paid or given, directly or indirectly, to a mortgage lender,  
1355 mortgage correspondent lender or mortgage broker required to be  
1356 licensed pursuant to sections 36a-485 to 36a-498a, inclusive, as  
1357 amended by this act, shall be refundable.

1358 (b) No mortgage loan originator required to be licensed pursuant to  
1359 sections 36a-485 to 36a-498a, inclusive, as amended by this act, shall  
1360 accept payment of any advance fee except an advance fee on behalf of  
1361 a mortgage lender, mortgage correspondent lender or mortgage broker  
1362 licensee. Nothing in this subsection shall be construed as prohibiting  
1363 the mortgage lender, mortgage correspondent lender or mortgage  
1364 broker licensee from paying a mortgage loan originator all or part of  
1365 an advance fee, provided such advance fee paid is not refundable  
1366 under this section.

1367 (c) Subsection (a) of this section shall not apply if: (1) The person  
1368 providing the advance fee and the mortgage lender, mortgage  
1369 correspondent lender or mortgage broker agree in writing that the  
1370 advance fee shall not be refundable, in whole or in part; and (2) the  
1371 written agreement complies in all respects with the provisions of  
1372 subsection (d) of this section.

1373 (d) An agreement under subsection (c) of this section shall meet all  
1374 of the following requirements to be valid and enforceable: (1) The  
1375 agreement shall be dated, signed by both parties, and be executed  
1376 prior to the payment of any advance fee; (2) the agreement shall  
1377 expressly state the total advance fee required to be paid and any  
1378 amount of the advance fee that shall not be refundable; (3) the  
1379 agreement shall clearly and conspicuously state any conditions under  
1380 which the advance fee will be retained by the mortgage lender,  
1381 mortgage correspondent lender or mortgage broker; (4) the term  
1382 "nonrefundable" shall be used to describe each advance fee or portion  
1383 thereof to which the term is applicable, and shall appear in boldface  
1384 type in the agreement each time it is used; and (5) the form of the  
1385 agreement shall (A) be separate from any other forms, contracts, or  
1386 applications utilized by the mortgage lender, mortgage correspondent  
1387 lender or mortgage broker, (B) contain a heading in a size equal to at  
1388 least ten-point boldface type that shall title the form "AGREEMENT  
1389 CONCERNING NONREFUNDABILITY OF ADVANCE FEE", (C)  
1390 provide for a duplicate copy which shall be given to the person paying  
1391 the advance fee at the time of payment of the advance fee, and (D)

1392 include such other specifications as the commissioner may by  
1393 regulation prescribe.

1394 (e) An agreement under subsection (c) of this section that does not  
1395 meet the requirements of subsection (d) of this section shall be  
1396 voidable at the election of the person paying the advance fee.

1397 (f) (1) No mortgage lender, mortgage correspondent lender or  
1398 mortgage broker required to be licensed pursuant to sections 36a-485  
1399 to 36a-498a, inclusive, as amended by this act, shall enter into an  
1400 agreement with or otherwise require any person to pay the mortgage  
1401 lender, mortgage correspondent lender or mortgage broker for any fee,  
1402 commission or other valuable consideration lost as a result of such  
1403 person failing to consummate a residential mortgage loan, provided  
1404 the mortgage lender, mortgage correspondent lender or mortgage  
1405 broker may collect such fee, commission or consideration as an  
1406 advance fee subject to the requirements of this section.

1407 (2) No mortgage broker required to be licensed pursuant to sections  
1408 36a-485 to 36a-498a, inclusive, as amended by this act, shall enter into  
1409 an agreement with or otherwise require any person to pay the  
1410 mortgage broker any fee, commission or other valuable consideration  
1411 for the prepayment of the principal of a residential mortgage loan by  
1412 such person before the date on which the principal is due.

1413 (g) (1) For the purposes of this subsection:

1414 (A) "Unfair or deceptive act or practice" means (i) the failure to  
1415 clearly and conspicuously state in the initial phase of the solicitation  
1416 that the solicitor is not affiliated with the mortgage lender, mortgage  
1417 correspondent lender or mortgage broker with which the consumer  
1418 initially applied, (ii) the failure to clearly and conspicuously state in  
1419 the initial phase of the solicitation that the solicitation is based on  
1420 personal information about the consumer that was purchased, directly  
1421 or indirectly, from a consumer reporting agency without the  
1422 knowledge or permission of the mortgage lender, mortgage  
1423 correspondent lender or mortgage broker with which the consumer

1424 initially applied, (iii) the failure in the initial solicitation to comply  
1425 with the provisions of the federal Fair Credit Reporting Act relating to  
1426 prescreening solicitations that use consumer reports, including the  
1427 requirement to make a firm offer of credit to the consumer, or (iv)  
1428 knowingly or negligently using information from a mortgage trigger  
1429 lead (I) to solicit consumers who have opted out of prescreened offers  
1430 of credit under the federal Fair Credit Reporting Act, or (II) to place  
1431 telephone calls to consumers who have placed their contact  
1432 information on a federal or state Do Not Call list; and

1433 (B) "Mortgage trigger lead" means a consumer report obtained  
1434 pursuant to Section 604 (c)(1)(B) of the federal Fair Credit Reporting  
1435 Act, 15 USC 1681b, where the issuance of the report is triggered by an  
1436 inquiry made with a consumer reporting agency in response to an  
1437 application for credit. "Mortgage trigger lead" does not include a  
1438 consumer report obtained by a mortgage lender or mortgage  
1439 correspondent lender that holds or services existing indebtedness of  
1440 the applicant who is the subject of the report.

1441 (2) No mortgage lender, mortgage correspondent lender, mortgage  
1442 broker or mortgage loan originator shall engage in an unfair or  
1443 deceptive act or practice in soliciting an application for a residential  
1444 mortgage loan when such solicitation is based, in whole or in part, on  
1445 information contained in a mortgage trigger lead. Any violation of this  
1446 subsection shall be deemed an unfair or deceptive trade practice under  
1447 subsection (a) of section 42-110b.

1448 Sec. 18. Section 36a-555 of the general statutes is repealed and the  
1449 following is substituted in lieu thereof (*Effective from passage*):

1450 No person shall engage in the business of making loans of money or  
1451 credit in the amount or to the value of fifteen thousand dollars or less  
1452 for loans made under section 36a-563 or section 36a-565, and charge,  
1453 contract for or receive a greater rate of interest, charge or consideration  
1454 than twelve per cent per annum therefor, unless licensed to do so by  
1455 the commissioner pursuant to sections 36a-555 to 36a-573, inclusive, as  
1456 amended by this act. The provisions of this section shall not apply to

1457 (1) a bank, (2) an out-of-state bank, (3) a Connecticut credit union, (4) a  
1458 federal credit union, (5) an out-of-state credit union, (6) a savings and  
1459 loan association wholly owned subsidiary service corporation, (7) a  
1460 person to the extent that such person makes loans for agricultural,  
1461 commercial, industrial or governmental use or extends credit through  
1462 an open-end credit plan, as defined in subdivision (8) of subsection (a)  
1463 of section 36a-676, for the retail purchase of consumer goods or  
1464 services, (8) a mortgage lender or mortgage correspondent lender  
1465 licensed pursuant to sections 36a-485 to 36a-498a, inclusive, as  
1466 amended by this act, when making [first] residential mortgage loans,  
1467 as defined in section 36a-485, as amended by this act, or (9) a licensed  
1468 pawnbroker.

1469 Sec. 19. (NEW) (*Effective from passage*) (a) In addition to any  
1470 authority provided under title 36a of the general statutes, the Banking  
1471 Commissioner shall have the authority to conduct investigations and  
1472 examinations as follows:

1473 (1) For purposes of initial licensing, license renewal, license  
1474 suspension, license conditioning, license revocation or termination, or  
1475 general or specific inquiry or investigation to determine compliance  
1476 with sections 36a-485 to 36a-498a, inclusive, of the general statutes, as  
1477 amended by this act, and sections 36a-534a and 36a-534b of the general  
1478 statutes, the commissioner may access, receive and use any books,  
1479 accounts, records, files, documents, information or evidence including,  
1480 but not limited to: (A) Criminal, civil and administrative history  
1481 information; (B) personal history and experience information including  
1482 independent credit reports obtained from a consumer reporting  
1483 agency described in Section 603(p) of the federal Fair Credit Reporting  
1484 Act, 15 USC 1681a; and (C) any other documents, information or  
1485 evidence the commissioner deems relevant to the inquiry or  
1486 investigation regardless of the location, possession, control or custody  
1487 of such documents, information or evidence.

1488 (2) For the purposes of investigating violations or complaints arising  
1489 under sections 36a-485 to 36a-498a, inclusive, of the general statutes, as

1490 amended by this act, or section 36a-534a or 36a-534b of the general  
1491 statutes, as amended by this act, or for the purposes of examination,  
1492 the commissioner may review, investigate or examine any mortgage  
1493 lender, mortgage correspondent lender, mortgage broker and  
1494 mortgage loan originator subject to said sections as often as necessary  
1495 in order to carry out the purposes of said sections. The commissioner  
1496 may direct, subpoena or order the attendance of and examine under  
1497 oath all persons whose testimony may be required about the loans or  
1498 the business or subject matter of any such examination or  
1499 investigation, and may direct, subpoena or order such person to  
1500 produce books, accounts, records, files and any other documents the  
1501 commissioner deems relevant to the inquiry.

1502 (b) Each mortgage lender, mortgage correspondent lender,  
1503 mortgage broker and mortgage loan originator subject to sections 36a-  
1504 485 to 36a-498a, inclusive, of the general statutes, as amended by this  
1505 act, and sections 36a-534a and 36a-534b of the general statutes, as  
1506 amended by this act, shall make or compile reports or prepare other  
1507 information as directed by the commissioner in order to carry out the  
1508 purposes of this section including accounting compilations,  
1509 information lists and data concerning loan transactions in a format  
1510 prescribed by the commissioner or such other information the  
1511 commissioner deems necessary to carry out the purposes of this  
1512 section.

1513 (c) In making any examination or investigation authorized by this  
1514 section, the commissioner may control access to any documents and  
1515 records of the licensee or person under examination or investigation.  
1516 The commissioner may take possession of the documents and records  
1517 or place a person in exclusive charge of the documents and records in  
1518 the place where they are usually kept. During the period of control, no  
1519 individual or person shall remove or attempt to remove any of the  
1520 documents and records except pursuant to a court order or with the  
1521 consent of the commissioner. Unless the commissioner has reasonable  
1522 grounds to believe the documents or records of the licensee have been,  
1523 or are at risk of being, altered or destroyed for purposes of concealing

1524 a violation of sections 36a-485 to 36a-498a, inclusive, of the general  
1525 statutes, as amended by this act, or section 36a-534a or 36a-534b of the  
1526 general statutes, as amended by this act, or section 20 of this act, the  
1527 licensee or owner of the documents and records shall have access to  
1528 the documents or records as necessary to conduct its ordinary business  
1529 affairs.

1530 (d) In order to carry out the purposes of this section, the  
1531 commissioner may:

1532 (1) Retain attorneys, accountants or other professionals and  
1533 specialists as examiners, auditors or investigators to conduct or assist  
1534 in the conduct of examinations or investigations;

1535 (2) Enter into agreements or relationships with other government  
1536 officials or regulatory associations in order to improve efficiencies and  
1537 reduce regulatory burden by sharing resources, standardized or  
1538 uniform methods or procedures, and documents, records, information  
1539 or evidence obtained under this section;

1540 (3) Use, hire, contract or employ public or privately available  
1541 analytical systems, methods or software to examine or investigate the  
1542 mortgage lender, mortgage correspondent lender, mortgage broker or  
1543 mortgage loan originator subject to sections 36a-485 to 36a-498a,  
1544 inclusive, of the general statutes, as amended by this act, and sections  
1545 36a-534a and 36a-534b of the general statutes, as amended by this act;

1546 (4) Accept and rely on examination or investigation reports made by  
1547 other government officials, within or without this state;

1548 (5) Accept audit reports made by an independent certified public  
1549 accountant for the mortgage lender, mortgage correspondent lender,  
1550 mortgage broker or mortgage loan originator subject to sections 36a-  
1551 485 to 36a-498a, inclusive, of the general statutes, as amended by this  
1552 act, and sections 36a-534a and 36a-534b of the general statutes, as  
1553 amended by this act, in the course of that part of the examination  
1554 covering the same general subject matter as the audit and may



1555 incorporate the audit report in the report of the examination, report of  
1556 investigation or other writing of the commissioner; or

1557 (6) Assess the mortgage lender, mortgage correspondent lender,  
1558 mortgage broker or mortgage loan originator subject to sections 36a-  
1559 485 to 36a-498a, inclusive, of the general statutes, as amended by this  
1560 act, and sections 36a-534a and 36a-534b of the general statutes, as  
1561 amended by this act, the cost of the services in subsection (a) of this  
1562 section.

1563 (e) The authority of this section shall remain in effect, whether such  
1564 a mortgage lender, mortgage correspondent lender, mortgage broker  
1565 or mortgage loan originator subject to sections 36a-485 to 36a-498a,  
1566 inclusive, of the general statutes, as amended by this act, and sections  
1567 36a-534a and 36a-534b of the general statutes, as amended by this act,  
1568 acts or claims to act under any licensing or registration law of this  
1569 state, or claims to act without such authority.

1570 (f) No licensee, individual or person subject to investigation or  
1571 examination under this section may knowingly withhold, abstract,  
1572 remove, mutilate, destroy or secrete any books, records, computer  
1573 records or other information.

1574 Sec. 20. (NEW) (*Effective from passage*) No person or individual  
1575 subject to sections 36a-485 to 36a-498a, inclusive, of the general  
1576 statutes, as amended by this act, and sections 36a-534a and 36a-534b of  
1577 the general statutes, as amended by this act, may:

1578 (1) Directly or indirectly employ any scheme, device or artifice to  
1579 defraud or mislead borrowers or lenders or to defraud any person;

1580 (2) Engage in any unfair or deceptive practice toward any person;

1581 (3) Obtain property by fraud or misrepresentation;

1582 (4) Solicit or enter into a contract with a borrower that provides in  
1583 substance that such person or individual may earn a fee or commission  
1584 through "best efforts" to obtain a loan even though no loan is actually

1585 obtained for the borrower;

1586 (5) Solicit, advertise or enter into a contract for specific interest rates,  
1587 points or other financing terms unless the terms are actually available  
1588 at the time of soliciting, advertising or contracting;

1589 (6) Conduct any business as a mortgage lender, mortgage  
1590 correspondent lender, mortgage broker or mortgage loan originator  
1591 without holding a valid license as required under sections 36a-485 to  
1592 36a-498a, inclusive, of the general statutes, as amended by this act, or  
1593 assist or aide and abet any person in the conduct of business as a  
1594 mortgage lender, mortgage correspondent lender, mortgage broker or  
1595 mortgage loan originator without a valid license as required under  
1596 sections 36a-485 to 36a-498a, inclusive, of the general statutes, as  
1597 amended by this act;

1598 (7) Fail to make disclosures as required by sections 36a-485 to 36a-  
1599 498a, inclusive, of the general statutes, as amended by this act, and any  
1600 other applicable state or federal law including regulations thereunder;

1601 (8) Fail to comply with sections 36a-485 to 36a-498a, inclusive, of the  
1602 general statutes, as amended by this act, or rules or regulations  
1603 adopted under said sections or fail to comply with any other state or  
1604 federal law, including the rules and regulations thereunder, applicable  
1605 to any business authorized or conducted under said sections;

1606 (9) Make, in any manner, any false or deceptive statement or  
1607 representation including, with regard to the rates, points or other  
1608 financing terms or conditions for a residential mortgage loan, or  
1609 engage in bait and switch advertising;

1610 (10) Negligently make any false statement or knowingly and  
1611 wilfully make any omission of material fact in connection with any  
1612 information or reports filed with a governmental agency or the system,  
1613 as defined in section 36a-485 of the general statutes, as amended by  
1614 this act, or in connection with any investigation conducted by the  
1615 Banking Commissioner or another governmental agency;

1616 (11) Make any payment, threat or promise, directly or indirectly, to  
1617 any person for the purposes of influencing the independent judgment  
1618 of the person in connection with a residential mortgage loan, or make  
1619 any payment threat or promise, directly or indirectly, to any appraiser  
1620 of a property, for the purposes of influencing the independent  
1621 judgment of the appraiser with respect to the value of the property;

1622 (12) Collect, charge, attempt to collect or charge or use or propose  
1623 any agreement purporting to collect or charge any fee prohibited by  
1624 sections 36a-485 to 36a-498a, inclusive, of the general statutes, as  
1625 amended by this act;

1626 (13) Cause or require a borrower to obtain property insurance  
1627 coverage in an amount that exceeds the replacement cost of the  
1628 improvements as established by the property insurer; or

1629 (14) Fail to truthfully account for moneys belonging to a party to a  
1630 residential mortgage loan transaction.

1631 Sec. 21. (NEW) (*Effective from passage*) The "unique identifier", as  
1632 defined in section 36a-485 of the general statutes, as amended by this  
1633 act, of any person originating a residential mortgage loan shall be  
1634 clearly shown on all residential mortgage loan application forms,  
1635 solicitations or advertisements, including business cards or web sites,  
1636 and any other documents as established by rule, regulation or order of  
1637 the Banking Commissioner.

1638 Sec. 22. (NEW) (*Effective from passage*) If any provision or application  
1639 of sections 36a-21 of the general statutes, as amended by this act, 36a-  
1640 485 to 36a-494, inclusive, of the general statutes, as amended by this  
1641 act, 36a-496 to 36a-498, inclusive, of the general statutes, as amended  
1642 by this act, 36a-498c of the general statutes, as amended by this act,  
1643 36a-534b of the general statutes, as amended by this act, 36a-555 of the  
1644 general statutes, as amended by this act, and sections 9 and 19 to 21,  
1645 inclusive, of this act to any person or circumstance is held invalid by a  
1646 court of this state, the remainder of said sections or the application of  
1647 such provision to other persons or circumstances shall not be affected.

1648 Sec. 23. Subsection (a) of section 36a-498a of the general statutes is  
 1649 repealed and the following is substituted in lieu thereof (*Effective*  
 1650 *October 1, 2009*):

1651 (a) No mortgage lender licensee or mortgage correspondent lender  
 1652 licensee under section 36a-489 and no person exempt from licensure  
 1653 under [subdivisions (1), (2), (5) and (6)] subsection (a) and subdivisions  
 1654 (1), (4) and (5) of subsection (b) of section 36a-487, as amended by this  
 1655 act, making a first mortgage loan may charge, impose or cause to be  
 1656 paid, directly or indirectly, prepaid finance charges that exceed in the  
 1657 aggregate, the greater of five per cent of the principal amount of the  
 1658 loan or two thousand dollars. If the proceeds of the loan are used to  
 1659 refinance an existing loan, the aggregate of the prepaid finance charges  
 1660 for the current refinancing and any previous financings by such  
 1661 licensee or exempt person or affiliate of such licensee or exempt person  
 1662 within two years of the current refinancing shall not exceed the greater  
 1663 of five per cent of the principal amount of the initial loan or two  
 1664 thousand dollars. The provisions of this section shall not prohibit such  
 1665 licensee or exempt person from charging, imposing or causing to be  
 1666 paid, directly or indirectly, prepaid finance charges in addition to  
 1667 those permitted by this section in connection with any additional  
 1668 proceeds received by the borrower in the refinancing, provided such  
 1669 prepaid finance charges on the additional proceeds shall not exceed  
 1670 five per cent of the additional proceeds.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	36a-21
Sec. 2	<i>from passage</i>	36a-485
Sec. 3	<i>from passage</i>	36a-534b
Sec. 4	<i>from passage</i>	36a-498c
Sec. 5	<i>from passage</i>	36a-486
Sec. 6	<i>from passage</i>	36a-487
Sec. 7	<i>from passage</i>	36a-488
Sec. 8	<i>from passage</i>	36a-489
Sec. 9	<i>from passage</i>	New section
Sec. 10	<i>from passage</i>	36a-490

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Sec. 11	<i>from passage</i>	36a-491
Sec. 12	<i>from passage</i>	36a-492
Sec. 13	<i>from passage</i>	36a-493(a)
Sec. 14	<i>from passage</i>	36a-494
Sec. 15	<i>from passage</i>	36a-496
Sec. 16	<i>from passage</i>	36a-497
Sec. 17	<i>from passage</i>	36a-498(a) to (g)
Sec. 18	<i>from passage</i>	36a-555
Sec. 19	<i>from passage</i>	New section
Sec. 20	<i>from passage</i>	New section
Sec. 21	<i>from passage</i>	New section
Sec. 22	<i>from passage</i>	New section
Sec. 23	<i>October 1, 2009</i>	36a-498a(a)

**BA**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Banking Dept.	BF - Cost	2.0 million	100,000

Note: BF=Banking Fund

**Municipal Impact:** None

**Explanation**

The bill results in a cost to the department of Banking of approximately \$2.0 million in FY 10 due to the development of a computer licensing system. Costs will include personnel, programming and hardware. Ongoing maintenance cost of \$100,000 will occur beginning in FY 11.

**The Out Years**

The annualized ongoing fiscal impact for FY 11 identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 948*****AN ACT CONCERNING IMPLEMENTATION OF THE S.A.F.E. MORTGAGE LICENSING ACT.*****SUMMARY:**

This bill implements the federal Secure and Fair Enforcement for Mortgage Licensing (S.A.F.E.) Act of 2008 by imposing conditions on licensing for mortgage professionals, including education and testing. It changes definitions and confidentiality and surety bond requirements. It expands the commissioner's enforcement and investigative authority. It also prohibits a number of actions on the part of persons subject to the mortgage licensing laws. Finally, the bill makes minor, technical, and conforming changes.

**EFFECTIVE DATE:** Upon passage, except for one technical provision, which is effective October 1, 2009

**§ 1 — CONFIDENTIALITY**

By law, certain Department of Banking records generally cannot be disclosed or be subject to public inspection or discovery. These records include:

1. examination and investigation reports and information contained in or derived from such reports;
2. confidential supervisory or investigative information obtained from a state, federal, or foreign regulatory or law enforcement agency; and
3. information obtained, collected, or prepared in connection with examinations, inspections or investigations, and complaints from the public received by the banking department, if the

records are protected from disclosure under federal or state law or, in the opinion of the commissioner, they would disclose, or would reasonably lead to the disclosure of personal, investigative, or harmful information.

However, the law allows the commissioner to disclose these records for any appropriate supervisory, governmental, law enforcement, or other public purpose. Such disclosures must be safeguarded and the law allows a court to issue an order to protect information in a court proceeding.

The current law already exempts from these requirements the disclosure of any information maintained by the commissioner with the Nationwide Mortgage Licensing System to certain agencies authorized to access the information and the licensee. The bill appears to exempt all disclosures of information to all state and federal regulatory officials and eliminates the provision allowing disclosure to the licensee. The bill does so by specifying that, except as otherwise provided in the confidentiality provisions of the federal S.A.F.E. Mortgage Licensing Act of 2008, any requirements under Connecticut or federal law or any privilege arising under Connecticut or federal law that protect the disclosure of a record provided to or maintained with the system continue to apply after it has been disclosed to the system. The bill allows the record to be shared with all state and federal regulatory officials that have oversight authority over the mortgage industry without the loss of privilege or the loss of confidentiality protections provided by Connecticut or federal law. For these purposes, the bill allows the commissioner to enter into agreements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or associations representing governmental agencies. The bill specifies that any Connecticut disclosure law that is inconsistent with this provision is superseded.

The bill also exempts any information or material that is protected from disclosure as discussed above from (1) disclosure under any



federal or state law governing disclosure to the public of information held by an officer or agency of the federal government or the respective state or (2) subpoena, discovery, or admission into evidence in any private civil action or administrative process, except a person may, at the person's discretion, waive in whole or in part a privilege held by the system concerning such information and material.

Finally, the bill provides that the confidentiality provisions do not apply to records relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that are included in the system for access by the public.

## § 2 — DEFINITIONS

The bill defines the term "control person" as an individual that directly or indirectly exercises control over another person. The bill specifies that any person that (a) is a director, general partner or executive officer or (B) directly or indirectly has the right to vote 10% or more of a class of any voting security or has the power to sell or direct the sale of 10% or more of the capital, is presumed to be a "control person." The bill defines "control" as power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise.

The bill specifies that the term "depository institution" has the same meaning as it does in the Federal Deposit Insurance Act, and includes any Connecticut credit union, federal credit union, or out-of-state credit union.

The bill specifies that "federal banking agency" 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.

The bill defines an "immediate family member" as a spouse, child, sibling, parent, grandparent, or grandchild and includes stepparents,

stepchildren, stepsiblings and adoptive relationships.

The bill specifies that an individual is a “natural person” and a “person” is a natural person, corporation, company, limited liability company, partnership, or association.

The bill defines a “loan processor” or “underwriter” as 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 mortgage licensing statutes. Under the bill, “clerical or support duties” include, subsequent to the receipt of an application, (1) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan, and (2) communication 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.

The bill eliminates the definition of “mortgage loan” (which currently just means a first or secondary mortgage loan) and simplifies the definition of first and secondary mortgage loan. It defines a “first mortgage loan” to include a residential mortgage loan that is secured by a first mortgage, and a secondary mortgage as a residential mortgage loan secured, in whole or in part, by mortgage, if the property is subject to at least one prior mortgage. The bill defines a “residential mortgage loan” as 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 the Consumer Credit Protection Act, or residential real estate located in this state upon which is constructed or intended to be constructed a dwelling.

The bill eliminates the definition of “residential property” and replaces it with “residential real estate,” which is any real property located in Connecticut, upon which is constructed or intended to be constructed a dwelling as defined in the Consumer Credit Protection

Act.

The bill defines “real estate brokerage activity” as any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) 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; (4) engaging in any activity for which a person engaged in the activity is required to be licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity described above.

The bill specifies that a “registered mortgage loan originator” is any individual who (1) meets the definition of mortgage loan originator and is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration; and (2) is registered with and maintains a unique identifier through the system. A “unique identifier” is a number or other identifier assigned by protocols established by the system.

The bill changes the definition of “mortgage broker” to a person who, for compensation or gain, or in expectation of compensation or gain (1) takes a residential mortgage loan application, or (2) offers or negotiates terms of a residential mortgage loan, excluding an individual who is sponsored by another mortgage lender, mortgage correspondent lender, or mortgage broker. “Sponsored” means employed or retained as an independent contractor.

The bill defines the term “mortgage loan originator” similarly, eliminating current law’s requirement that originators act on behalf of a lender or broker. It states that this is an individual that takes a residential mortgage loan application or offers or negotiates terms of a

residential mortgage loan for compensation or gain. The bill specifies that this does not include (1) any person who does not otherwise fall within the definition of mortgage loan originator and, as under current law, who performs purely administrative or clerical tasks on behalf of a mortgage loan originator; (2) a person who only performs real estate brokerage activities and is licensed under the statutes governing real estate brokers and salespersons, unless the individual is compensated by a mortgage lender, mortgage correspondent lender, mortgage broker or other mortgage loan originator or by one of their agents; or (3) a person solely involved in extensions of credit relating to timeshare plans. "Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

### **§ 3 — MORTGAGE LICENSING SYSTEM REQUIREMENTS**

By law, the banking commissioner must participate in the Nationwide Mortgage Licensing System and allow it to process applications for and maintain records on mortgage professionals. The bill specifies that the commissioner must require these individuals to be licensed and registered through the system. For this purpose, the bill allows the commissioner, by order or regulation, to establish the requirements and procedures necessary for participation in the system, including, but not limited to:

1. applicant background checks for criminal history through fingerprint or other databases, civil or administrative records, or credit history or any other information as deemed necessary by the system;
2. fees to apply for or renew licenses through the system;
3. license renewal or reporting dates; and
4. the process for amending or surrendering a license or any other such activities as the commissioner deems necessary for

participation in the system.

For the purpose of participating in the system, the bill allows the commissioner to waive or modify by regulation or order, any requirement of the mortgage licensing statutes and to establish new requirements as reasonably necessary to participate in the system.

The bill requires the commissioner to report regularly to the system on violations of and enforcement actions under the mortgage licensing statutes and the bill's provisions on investigative authority, prohibited acts, and other relevant information. The bill also allows him to establish relationships or enter into contracts with the system or other entities designated by the system to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the mortgage licensing statutes.

For the purposes of the mortgage licensing statutes and to reduce the points of contact that the Federal Bureau of Investigation may have to maintain under the federal S.A.F.E. Mortgage Licensing Act, the bill allows the commissioner to use the system as a channeling agent for requesting information from and distributing information to any governmental agency or any other source. The bill also requires the commissioner to establish a process for mortgage lenders, mortgage correspondent lenders, mortgage brokers and mortgage loan originators to challenge information the commissioner enters into the system.

Finally, the bill also requires mortgage lenders, brokers, and originator licensees to submit to the system reports of condition that must be in the form and must contain the information the system requires.

## **§ 5 — ORIGINATOR LICENSING**

Effective April 1, 2010, the bill requires any individual (natural person) to obtain a mortgage loan originator license before conducting such business unless such individual does not engage directly in the activities of a mortgage loan originator. The license must be

maintained annually and each licensed originator must register with, and maintain a valid unique identifier issued by, the system.

The law prohibits an individual from acting as an originator for more than one person at a time. Additionally, a mortgage loan originator license is not effective during any period when the mortgage loan originator is not associated with a lender or broker. Finally, the law allows the originator or the broker or lender to file a notification of termination of employment with the system. The bill specifies that the brokers and lenders serve as the originator's sponsor.

The bill exempts from the originator licensing requirements:

1. a registered mortgage loan originator, when acting for an institution or subsidiary;
2. an individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate family member of such individual;
3. an individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and
4. 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 mortgage lender, mortgage correspondent lender, mortgage broker or other mortgage loan originator or by any agent of such mortgage lender, mortgage correspondent lender, mortgage broker or other mortgage loan originator.

The bill prohibits an individual who engages solely in loan processor or underwriter activities from representing to the public, through advertising or other means of communicating or providing information, that the individual can or will perform any of the activities of a mortgage loan originator.

Starting July 31, 2010, the bill prohibits a loan processor or underwriter who is an independent contractor from engaging in loan processor or underwriter activities unless they obtain and maintain a license as a mortgage loan originator. These individuals must also have and maintain a valid unique identifier issued by the system.

## **§ 6 — EXEMPTIONS FROM LICENSURE**

By law, any bank, out-of-state bank, or Connecticut or federal credit union, and their federally chartered subsidiaries are exempt from the mortgage licensing requirements. The bill specifies that the exemption only applies if the banks are federally insured. The bill also extends this exemption to Connecticut banks and credit unions' wholly-owned subsidiaries. The bill requires the Connecticut subsidiaries to provide written notification to the commissioner prior to engaging in such activity.

## **§ 7 — GENERAL LICENSING REQUIREMENTS**

The bill expands the requirements necessary to obtain a broker or lender license to include preclicensing education and testing. The law requires the broker or lender to have a qualified individual at the main office for which the license is sought, and a branch manager at each branch. Effective April 1, 2010, the bill requires the individuals to meet the education and testing requirements.

By law, broker and lender, and originator license applications must be filed with the system. The bill specifies that they must be filed in a commissioner prescribed form. It requires that the form include content as set forth by the commissioner's instruction or procedure and may be changed or updated as necessary by the commissioner to carry out relevant statutes. The applicant must at least furnish to the system information concerning the identity of the applicant, any control person, the qualified individual and any branch manager, including personal history and experience in a form prescribed by the system, and information related to any administrative, civil, or criminal findings by any governmental jurisdiction. The bill limits the requirement for certain supplemental information to the initial

application.

The bill requires a broker or lender license applicant, any control person of the applicant, and the qualified individual or branch manager with supervisory authority at the office for which the license is sought to submit authorizations for them to obtain an independent credit report from a consumer reporting agency. Originator applicants must provide this authorization starting November 1, 2010 and they must furnish their fingerprints to the system starting April 1, 2010.

## **§ 8 — STANDARDS FOR ISSUANCE AND RENEWAL OF LICENSES**

### ***Minimum Standards for Issuance***

The bill prohibits the commissioner from issuing an initial license for a mortgage lender or broker, unless he finds, at a minimum, that:

1. the applicant meets net worth and prelicensing education and testing requirements;
2. the applicant, the control persons of the applicant, and the qualified individual or branch manager with supervisory authority at the office for which the license is sought have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing or at any time preceding the date of application if such felony involved an act of fraud, dishonesty, a breach of trust or money laundering, provided any pardon of a conviction shall not be a conviction for purposes of this subdivision;
3. similar to current law, the applicant demonstrates that the financial responsibility, character, and general fitness of the applicant, the control persons of the applicant and the qualified individual or branch manager having supervisory authority over the office for which the license is sought are such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly,



and efficiently within the purposes of this chapter;

4. the applicant has met the required surety bond requirement;  
and
5. as under current law, the applicant has not made a material misstatement in the application.

If the commissioner denies a license based on an applicant's failure to meet these requirements, he must notify the applicant of the reasons for the denial.

The commissioner cannot issue an initial license for a mortgage loan originator unless he, at a minimum, finds that the applicant has:

1. never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacating of such revocation shall not be deemed a revocation;
2. similar to current law, has not been convicted of, or pled guilty or nolo contendere to, a felony and demonstrates financial responsibility, character and general fitness as discussed above;
3. effective April 1, 2010, completed the prelicensing education requirement and passed a written test as required by the bill;
4. effective July 31, 2010, met the surety bond requirement; and
5. as under current law, not made a material misstatement in the application.

With regard to originators, the bill specifies that a person has shown that he or she is not financially responsible when such person has shown a disregard in the management of such person's own financial condition. A determination that a person has not shown financial responsibility may include, but is not limited to: current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures during the three years preceding the date of application or

the date of evaluation for renewal of a license; or a pattern of seriously delinquent accounts within the previous three years.

If the commissioner denies an application for a mortgage loan originator license, he must notify the applicant in the same way he must notify a broker or lender applicant.

### ***Minimum Standards for Renewal***

The bill provides at a minimum, in order to renew a mortgage lender or broker license, the applicant must continue to meet the minimum standards above; effective April 1, 2010, each qualified person and branch manager has completed the prelicensing education requirement and passed a written test, or has satisfied the annual continuing education requirements; and the lender or broker has paid all fees for renewal of the license. The bill adopts similar standards for originators.

If these standards are not met, the license must expire. The bill allows the commissioner to adopt procedures for the reinstatement of expired licenses consistent with the standards established by the system.

The bill provides that originators licensed as of the bill's enactment date have until October 31, 2010 to complete the prelicensing education requirement and pass the written test.

## **§ 9 — PRELICENSING EDUCATION, TESTING, AND CONTINUING EDUCATION**

### ***Prelicensing Education***

The bill requires a person to complete at least 24 hours of approved education with at least (1) three hours of instruction on relevant federal law and regulations; (2) three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues; and (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

These courses must be reviewed and approved by the system based

on reasonable standards. This must include review and approval of the course provider. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the system and courses provided by the applicant's affiliated entity or employer are permitted. The bill requires a person who has successfully completed prelicensing education requirements in another state to be granted reciprocity if those requirements were system-approved.

A person licensed prior to the bill's effective date who is applying for a license renewal after the bill's effective date must demonstrate that he or she has completed all of the continuing education requirements for the year in which the license was last held.

### **Testing**

The bill requires an individual to pass, with a score of at least 75%, a qualified written test developed by the system and administered by a system-approved test provider based on reasonable standards. The test must adequately measure the applicant's knowledge and comprehension in appropriate subject areas, including ethics, federal law and regulation pertaining to mortgage origination, state law and regulation pertaining to mortgage origination, and federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues. The bill allows the test provider to provide a test at the location of (1) the applicant's employer or its subsidiary or (2) any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

The bill allows an individual to retake a test three consecutive times with each consecutive test occurring at least 30 days after the preceding test. After failing three consecutive tests, an individual has to wait at least six months before taking the test again. The bill requires a licensed mortgage lender, mortgage correspondent lender, mortgage broker, or mortgage loan originator who fails to maintain a valid license for a period of five years or longer, not taking into account any time during which such individual is a registered mortgage loan

originator, to retake the test.

### ***Continuing Education***

The bill requires a licensed lender, broker, or originator to complete at least eight hours of education on the same topics and subject to the same conditions as the prelicensing education courses. The bill allows a licensee to only receive credit for a continuing education course in the year in which the course is taken, and prohibits the licensee from taking the same approved course in the same or successive years to meet the annual requirements for continuing education. The bill allows a licensee who is an instructor of an approved continuing education course to receive credit toward the licensee's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

The bill requires a licensed mortgage loan originator who subsequently becomes unlicensed to complete the continuing education requirements for the last year in which the license was held prior to issuance of an initial or renewed license.

The bill allows a person who meets the minimum standards discussed above and who paid all required fees to compensate for any deficiency in continuing education requirements pursuant to regulations adopted by the commissioner.

The bill defines the term "nontraditional mortgage product" as any mortgage product other than a 30-year fixed rate mortgage.

### **§10 — SURRENDER OF LICENSES**

By law, any licensee who intends to permanently cease engaging in the business of making residential mortgage loans or acting as a mortgage broker at any time during a license period for any cause, must file a surrender of the license on the system. The bill instead requires them to file a request to surrender the license and specifies that the surrender is not effective until it has been accepted by the commissioner.

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**§ 11 — EXPIRATION OF ORIGINATOR LICENSES AND LICENSING FEES**

By law, mortgage loan originator licenses expire when the licenses of the retaining lender or broker expire, if they are not renewed. The bill aligns the expiration date for originator licenses with broker and lender licenses, providing that they generally expire at the close of business on December 31.

The bill also sets the license fee for originators at \$300 starting November 1, 2009. Under current law, lenders and brokers must pay \$100 initial fee and a \$125 renewal fee for each originator. As the bill eliminates these requirements, it is not clear what fee will apply between the bill's effective date and November 1, 2009.

**§ 12 — BONDING REQUIREMENT**

By law, the surety bond that mortgage lenders and brokers: are required to obtain is scheduled to increase from \$40,000 to \$80,000 starting August 1, 2009. The bill instead requires, effective July 31, 2010, the bond to be in an amount that reflects the dollar amount of the loans originated by the mortgage lender, mortgage correspondent lender or mortgage broker, as determined by the commissioner. The bill provides that, effective July 31, 2010, each person licensed as a mortgage loan originator must be covered by a surety bond, provided the coverage must be provided through the bond of the mortgage lender or broker that sponsors the originator. The bill requires the bond's penal sum be maintained in an amount that reflects the dollar amount of loans originated by the mortgage loan originator, as determined by the commissioner. The bill allows the commissioner to adopt regulations with respect to the requirements for the surety bonds.

The bill requires licensees to notify the commissioner of the commencement of an action on the licensee's bond. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond, and immediately on recovery on any action on the bond, the licensee must file a new bond.

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**§ 14 — ENFORCEMENT**

The bill allows the commissioner to suspend a license or require a person to take or refrain from taking certain actions when he finds that a person: (1) has violated the mortgage licensing law or any regulation or order issued thereunder; (2) has been convicted of a felony that would preclude licensing under the law; or (3) no longer demonstrates the financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the person will operate honestly, fairly, and efficiently.

To do this, the bill requires him to notify the person by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice is deemed received by such person on the earlier of the date of actual receipt or seven days after mailing or sending. The notice must include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the general statutes, regulations, or orders alleged to have been violated;
4. a short and plain statement of the matters asserted; and
5. a statement indicating that such person may file a written request for a hearing on the matters asserted not later than 14 days after receipt of the notice.

If the commissioner finds that the protection of borrowers requires immediate action, the bill allows him to suspend the person and require the person to take or refrain from taking action as the commissioner determines is necessary, by incorporating a finding to that effect in the notice. The suspension or prohibition becomes effective on receipt and, unless stayed by a court, remains in effect until the entry of a permanent order or the dismissal of the matters

asserted. If a hearing is requested within the time specified in the notice, the commissioner must hold it on the matters asserted in the notice unless the person fails to appear at the hearing.

After the hearing, if the commissioner finds that the person has violated the laws or lacks financial responsibility, he can order the removal of the person from office and from any employment in the mortgage business in this state. It is unclear what is meant by “removal of the person from office.” The commissioner can still do this if the person fails to appear at the hearing.

If a license was issued by mistake, the bill allows the commissioner to issue a temporary order to cease business. The commissioner must give the licensee an opportunity for a hearing. The order becomes effective upon receipt by the licensee and, unless set aside or modified by a court, remains in effect until the effective date of a permanent order or dismissal of the matters asserted in the notice.

#### **§ 19 — COMMISSIONER’S INVESTIGATIVE AUTHORITY**

In addition to his existing authority under the banking statutes, the bill gives the commissioner the authority to conduct investigations and examinations under certain circumstances.

First, for purposes of initial licensing; license renewal, suspension, conditioning, revocation, or termination; or general or specific inquiry or investigation to determine compliance with the mortgage licensing statutes, the bill allows the commissioner to access, receive and use any books, accounts, records, files, documents, information, or evidence. This includes: (1) criminal, civil, and administrative history information; (2) personal history and experience including independent credit reports obtained from a consumer reporting agency; and (3) any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of their location, possession, control, or custody.

The bill also allows the commissioner to review, investigate, or examine any mortgage lender, broker, or originator subject to the laws

as often as necessary in order to carry out the law. The bill allows the commissioner to 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 examination or investigation, and can direct, subpoena, or order such person to produce books, accounts, records, files, and other documents the commissioner deems relevant to the inquiry.

The bill requires each lender, broker, and originator subject to the laws to make or compile reports or prepare other information as directed by the commissioner in order to carry out these purposes, including accounting compilations, information lists, and data concerning loan transactions in a format prescribed by the commissioner or such other information the commissioner deems necessary to carry out the purposes of this section.

In conducting any examination or investigation under these provisions, the bill allows the commissioner to control access to any documents and records of the licensee or person under examination or investigation. The commissioner can 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, the bill prohibits an individual or person from removing or attempting to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed to conceal a violation, the licensee or owner of the documents and records must have access to them as necessary to conduct its ordinary business affairs.

In order to carry out these powers, the bill allows the commissioner to:

1. retain attorneys, accountants, or other professionals and specialists such as examiners, auditors, or investigators to conduct or assist in examinations or investigations;



2. enter into agreements or relationships with other government officials or regulatory associations 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;
3. use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the lender, broker, or originator;
4. accept and rely on examination or investigation reports made by other government officials, within or without this state;
5. accept audit reports made by an independent certified public accountant for the lender, broker, or originator, 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 commissioner; or
6. assess the broker, lender, or originator the cost of the services to conduct the investigations and examinations.

The bill specifies that this authority remains in effect, whether the lender, broker, or originator acts or claims to act under any licensing or registration law of this state, or claims to act without such authority. The bill prohibits a licensee, individual or person subject to investigation or examination under these provisions from knowingly withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information.

## **§ 20 — PROHIBITED BEHAVIORS BY PERSONS SUBJECT TO THE MORTGAGE LICENSING LAWS**

The bill prohibits any person subject to the mortgage licensing law from:

1. directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any

- person;
2. engaging in any unfair or deceptive practice toward any person;
  3. obtaining property by fraud or misrepresentation;
  4. soliciting or entering into a contract with a borrower that provides in substance that such person or individual may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;
  5. soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of solicitation, advertisement, or contracting;
  6. conducting any business as lender, broker, or originator without holding a valid license, or assisting or aiding and abetting any person in the conduct of business without a valid license ;
  7. failing to make disclosures as required by the mortgage licensing statutes and any other applicable state or federal law;
  8. failing to comply with the mortgage licensing statutes, or any other state or federal law applicable to mortgage lending;
  9. making, in any manner, any false or deceptive statement or representation including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;
  10. negligently making any false statement or knowingly and willfully making any omission of material fact in connection with any information or reports filed with a governmental agency or the system or in connection with any investigation conducted by the commissioner or another governmental agency;
  11. making any payment, threat, or promise, directly or indirectly,

to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or making any payment threat or promise, directly or indirectly, to any appraiser of a property to influence the independent judgment of the appraiser with respect to the value of the property;

12. collecting, charging, attempting to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by the mortgage licensing laws;
13. causing or requiring a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or
14. failing to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

## **§ 21 — UNIQUE IDENTIFIER ON DOCUMENTS**

The bill requires any person originating a residential mortgage loan to clearly show his or her unique identifier on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the commissioner.

## **§ 22 — SEVERABILITY**

The bill provides that if any provision or application of the bill to any person or circumstance is held invalid by a court of this state, the remainder of the sections or the application of the provision to other persons or circumstances are not affected.

## **BACKGROUND**

### ***Public Law 110-289***

P. L. 110-289 encourages participation in the Nationwide Mortgage Licensing and Registry (NMLSR) system created in 2004 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. It requires licensing of all “loan

originators” which it defines as individuals who (1) take a residential mortgage loan application and (2) offer or negotiate terms of a residential mortgage loan for compensation or gain.

The act establishes requirements for loan originator licensing or registration, including fingerprint and background checks; 20 hours of pre-licensing education; a written test; and eight hours of continuing education annually. It also prevents the issuance of a license to certain applicants.

The act requires the U.S. Department of Housing and Urban Development (HUD) to establish a backup licensing system for a state if, after one year (or two years for biennial legislatures), a state does not (1) participate in the Nationwide Mortgage Licensing System or (2) have a system in place that addresses certain requirements. The HUD secretary can extend this period by up to two years. The Act also requires federal bank regulators to establish a parallel registration system for FDIC-insured banks.

### **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 16 Nay 0 (03/10/2009)