

A bill for an act

relating to financial institutions; providing for the licensing and regulation of an individual engaged in the business of a mortgage loan origination or the mortgage loan business; providing certain conforming and transitional provisions; appropriating money; amending Minnesota Statutes 2008, sections 58.04, subdivision 1; 58.08, by adding a subdivision; 58.09; 58.10, subdivision 1; 58.11; Minnesota Statutes 2009 Supplement, section 58.06, subdivision 2; proposing coding for new law as Minnesota Statutes, chapter 58A; repealing Minnesota Statutes 2009 Supplement, section 58.126.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

## ARTICLE 1

### MINNESOTA S.A.F.E. MORTGAGE LICENSING ACT OF 2010

#### Section 1. [58A.01] TITLE.

This chapter may be cited as the "Minnesota Secure and Fair Enforcement for Mortgage Licensing Act of 2010" or "Minnesota S.A.F.E. Mortgage Licensing Act of 2010."

#### Sec. 2. [58A.02] DEFINITIONS.

Subdivision 1. **Application.** For purposes of this chapter, the definitions in subdivisions 2 to 15 have the meanings given them.

Subd. 2. **Depository institution.** "Depository institution" has the meaning given in United States Code, title 12, section 1813, and includes a credit union.

Subd. 3. **Federal banking agencies.** "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the comptroller of the currency, the director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

Subd. 4. **Immediate family member.** "Immediate family member" means a spouse, child, sibling, a parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Subd. 5. **Individual.** "Individual" means a natural person.

Subd. 6. **Loan processor or underwriter.** "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under chapter 58. For purposes of this subdivision, the term "clerical or support duties" may include after 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) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

Subd. 7. **Mortgage loan originator.** "Mortgage loan originator":

(1) means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan;

(2) does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 58A.03, subdivision 3;

(3) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered according to Minnesota law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by an agent of the lender, mortgage broker, or other mortgage loan originator; and

(4) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in United States Code, title 11, section 101(53D).

Subd. 8. **Nationwide Mortgage Licensing System and Registry.** "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

Subd. 9. **Nontraditional mortgage product.** "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage loan.

3.1           Subd. 10. **Person.** "Person" means a natural person, corporation, company, limited  
3.2 liability company, partnership, or association.

3.3           Subd. 11. **Real estate brokerage activity.** "Real estate brokerage activity" means  
3.4 an activity that involves offering or providing real estate brokerage services to the public,  
3.5 including:

3.6           (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor,  
3.7 or lessee of real property;

3.8           (2) bringing together parties interested in the sale, purchase, lease, rental, or  
3.9 exchange of real property;

3.10          (3) negotiating, on behalf of a party, a portion of a contract relating to the sale,  
3.11 purchase, lease, rental, or exchange of real property other than in connection with  
3.12 providing financing with respect to the transaction;

3.13          (4) engaging in an activity for which a person engaged in the activity is required to  
3.14 be registered or licensed as a real estate agent or real estate broker under any applicable  
3.15 law; and

3.16          (5) offering to engage in any activity, or act in any capacity, described in clause  
3.17 (1), (2), (3), or (4).

3.18          Subd. 12. **Registered mortgage loan originator.** "Registered mortgage loan  
3.19 originator" means an individual who:

3.20          (1) meets the definition of mortgage loan originator and is an employee of:

3.21           (i) a depository institution;

3.22           (ii) a subsidiary that is owned and controlled by a depository institution and  
3.23 regulated by a federal banking agency; or

3.24           (iii) an institution regulated by the Farm Credit Administration; and

3.25          (2) is registered with, and maintains a unique identifier through, the Nationwide  
3.26 Mortgage Licensing System and Registry.

3.27          Subd. 13. **Residential mortgage loan.** "Residential mortgage loan" means a loan  
3.28 primarily for personal, family, or household use that is secured by a mortgage, deed of  
3.29 trust, or other equivalent consensual security interest on a dwelling, as defined in United  
3.30 States Code, title 15, section 1602(v), or residential real estate upon which a dwelling is  
3.31 constructed or intended to be constructed.

3.32          Subd. 14. **Residential real estate.** "Residential real estate" means real property  
3.33 located in Minnesota, upon which a dwelling is constructed or is intended to be  
3.34 constructed.

Subd. 15. **Unique identifier.** "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Sec. 3. **[58A.03] LICENSE AND REGISTRATION REQUIRED.**

Subdivision 1. **Generally.** An individual, unless specifically exempted from this chapter under subdivision 2, shall not engage in the business of a mortgage loan originator with respect to a dwelling located in this state without first obtaining and maintaining a license under this chapter. An individual may not engage in the mortgage loan business unless the individual is employed and supervised by an entity which is either licensed or exempt from licensing under chapter 58. A licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

Subd. 2. **Exemptions.** The following are exempt from this chapter:

(1) a registered mortgage loan originator, when acting for an entity described in section 58A.02, subdivision 12, clause (1);

(2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) an individual who offers or negotiates 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 lender, a mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator.

Subd. 3. **Independent contractor loan processors or underwriters.** A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license under subdivision 1. An independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

**EFFECTIVE DATE.** In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subdivision 1 is July 31, 2010, or a later date approved by the Secretary of the U.S. Department of

5.1 Housing and Urban Development, under the authority granted in Public Law 110-289,  
5.2 section 1508(a).

5.3       Sec. 4. **[58A.04] STATE LICENSE AND REGISTRATION APPLICATION AND**  
5.4 **ISSUANCE.**

5.5           Subdivision 1. **Application form.** An applicant for a license shall apply in a form  
5.6 as prescribed by the commissioner. The form must contain content as set forth by rule,  
5.7 instruction, or procedure of the commissioner and may be changed or updated as necessary  
5.8 by the commissioner in order to carry out the purposes of this chapter.

5.9           Subd. 2. **Commissioner may establish relationships or contracts.** In order  
5.10 to fulfill the purposes of this chapter, the commissioner is authorized to establish  
5.11 relationships or contracts with the Nationwide Mortgage Licensing System and Registry  
5.12 or other entities designated by the Nationwide Mortgage Licensing System and Registry to  
5.13 collect and maintain records and process transaction fees or other fees related to licensees  
5.14 or other persons subject to this chapter.

5.15           Subd. 3. **Waive or modify requirements.** For the purpose of participating in the  
5.16 Nationwide Mortgage Licensing System and Registry, the commissioner is authorized to  
5.17 waive or modify, in whole or in part, by rule or order, any or all of the requirements of  
5.18 this chapter and to establish new requirements as reasonably necessary to participate in  
5.19 the Nationwide Mortgage Licensing System and Registry.

5.20           Subd. 4. **Background checks.** In connection with an application for licensing as a  
5.21 mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide  
5.22 Mortgage Licensing System and Registry information concerning the applicant's identity,  
5.23 including:

5.24           (1) fingerprints for submission to the Federal Bureau of Investigation, and a  
5.25 governmental agency or entity authorized to receive the information for a state, national,  
5.26 and international criminal history background check; and

5.27           (2) personal history and experience in a form prescribed by the Nationwide  
5.28 Mortgage Licensing System and Registry, including the submission of authorization for  
5.29 the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

5.30           (i) an independent credit report obtained from a consumer reporting agency  
5.31 described in United States Code, title 15, section 1681a(p); and

5.32           (ii) information related to administrative, civil, or criminal findings by a  
5.33 governmental jurisdiction.

5.34           Subd. 5. **Agent for purposes of requesting and distributing criminal**  
5.35 **information.** For the purposes of this section and in order to reduce the points of

contact which the Federal Bureau of Investigation may have to maintain for purposes of subdivision 4, clauses (1) and (2), the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

**Subd. 6. Agent for purposes of requesting and distributing noncriminal information.** For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subdivision 4, clause (2)(i) and (ii), the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

**Sec. 5. [58A.045] TERM OF LICENSE AND FEES.**

**Subdivision 1. Term.** Licenses for mortgage loan originators issued under this chapter expire on December 31 and are renewable on January 1 of each year after that date.

**Subd. 2. Fees.** The following fees must be paid to the commissioner:

(1) for a mortgage loan originator license, \$90; and

(2) for a renewal mortgage loan originator license, \$50.

**Sec. 6. [58A.05] ISSUANCE OF LICENSE.**

The commissioner shall not issue a mortgage loan originator license unless the commissioner finds at a minimum, that:

(1) the applicant has never had a mortgage loan originator license revoked in a governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation;

(2) the applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

(i) during the seven-year period preceding the date of the application for licensing and registration;

(ii) at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; or

(iii) provided that a pardon of a conviction is not a conviction for purposes of this clause;

(3) the applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this chapter. For purposes of this chapter, a person has shown that

the person is not financially responsible when the person has shown a disregard in the management of the person's own financial condition. A determination that an individual has not shown financial responsibility may include, but is not limited to:

(i) current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) current outstanding tax liens or other government liens and filings;

(iii) foreclosures within the past three years; and

(iv) a pattern of seriously delinquent accounts within the past three years;

(4) the applicant has completed the prelicensing education requirement described in section 58A.06;

(5) the applicant has passed a written test that meets the test requirement described in section 58A.07; and

(6) the applicant has met the surety bond requirement as required under section 58A.13.

**Sec. 7. [58A.06] PRELICENSING AND RELICENSING EDUCATION OF LOAN ORIGINATORS.**

Subdivision 1. **Minimum educational requirements.** In order to meet the prelicensing education requirement referred to in section 58A.05, clause (4), a person shall complete at least 20 hours of education approved according to subdivision 2, that includes at least:

(1) three hours of federal law and regulations;

(2) three hours of ethics, which includes 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.

Subd. 2. **Approved educational courses.** For purposes of subdivision 1, prelicensing education courses must be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course must include review and approval of the course provider.

Subd. 3. **Approval of employer and affiliate educational courses.** Nothing in this section precludes a prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

Subd. 4. **Venue of education.** Prelicensing education may be offered in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

Subd. 5. **Reciprocity of education.** The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivision 1 for a state must be accepted as credit toward completion of prelicensing education requirements in Minnesota.

Subd. 6. **Relicensing education requirements.** A person previously licensed under this chapter after the effective date of this chapter applying to be licensed again must prove that the person has completed all of the continuing education requirements for the year in which the license was last held.

Sec. 8. **[58A.07] TESTING OF LOAN ORIGINATORS.**

Subdivision 1. **Generally.** In order to meet the written test requirement referred to in section 58A.05, clause (5), an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

Subd. 2. **Qualified test.** A written test must not be treated as a qualified written test for purposes of subdivision 1 unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (1) ethics;
- (2) federal law and regulation pertaining to mortgage origination;
- (3) state law and rule pertaining to mortgage origination; and
- (4) federal and state law and rule, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

Subd. 3. **Testing location.** Nothing in this section prohibits a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of a subsidiary or affiliate of the employer of the applicant, or the location of an entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

Subd. 4. **Minimum competence.** (a) An individual is not considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.



(b) An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(c) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

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

Sec. 9. **[58A.08] STANDARDS FOR LICENSE RENEWAL.**

Subdivision 1. **Generally.** The minimum standards for license renewal for a mortgage loan originator include that the mortgage loan originator:

(1) continues to meet the minimum standards for license issuance under section 58A.05;

(2) has satisfied the annual continuing education requirements described in section 58A.09; and

(3) has paid all required fees for renewal of the license.

Subd. 2. **Failure to satisfy minimum standards of license renewal.** The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal expires. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

Sec. 10. **[58A.09] CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS.**

Subdivision 1. **Generally.** In order to meet the annual continuing education requirements referred to in section 58A.08, subdivision 1, clause (2), a licensed mortgage loan originator shall complete at least eight hours of education approved according to subdivision 2 that includes at least:

(1) three hours of federal law and regulations;

(2) two hours of ethics, which includes 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.

Subd. 2. **Approved educational courses.** For purposes of subdivision 1, continuing education courses must be reviewed and approved by the Nationwide Mortgage Licensing

System and Registry based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider.

Subd. 3. **Approval of employer and affiliate educational courses.** Nothing in this section precludes an education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or a subsidiary or affiliate of the employer or entity.

Subd. 4. **Venue of education.** Continuing education may be offered either in a classroom, online, or by other means approved by the Nationwide Mortgage Licensing System and Registry.

Subd. 5. **Calculation of continuing education credits.** A licensed mortgage loan originator:

(1) except for subdivision 9 and section 58A.08, subdivision 2, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

Subd. 6. **Instructor credit.** A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

Subd. 7. **Reciprocity of education.** A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivision 1 for a state must be accepted as credit toward completion of continuing education requirements in Minnesota.

Subd. 8. **Lapse in license.** A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held before a new or renewed license is issued.

Subd. 9. **Deficiency.** A person meeting the requirements of section 58A.08, subdivision 1, clauses (1) and (3), may make up a deficiency in continuing education as established by rule of the commissioner.

**Sec. 11. [58A.10] AUTHORITY TO REQUIRE LICENSE.**

In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the commissioner may participate in the Nationwide Mortgage Licensing

11.1 System and Registry. For this purpose, the commissioner may establish by rule or order  
11.2 requirements as necessary, including but not limited to:

11.3 (1) background checks for:

11.4 (i) criminal history through fingerprint or other databases;

11.5 (ii) civil or administrative records;

11.6 (iii) credit history; or

11.7 (iv) other information as determined necessary by the Nationwide Mortgage

11.8 Licensing System and Registry;

11.9 (2) the payment of fees to apply for or renew licenses through the Nationwide

11.10 Mortgage Licensing System and Registry;

11.11 (3) the setting or resetting as necessary of renewal or reporting dates; and

11.12 (4) requirements for amending or surrendering a license or other activities the

11.13 commissioner considers necessary for participation in the Nationwide Mortgage Licensing

11.14 System and Registry.

11.15 Sec. 12. **[58A.11] NATIONWIDE MORTGAGE LICENSING SYSTEM AND**  
11.16 **REGISTRY INFORMATION CHALLENGE PROCESS.**

11.17 The commissioner shall establish a process that allows mortgage loan originators  
11.18 to challenge information entered into the Nationwide Mortgage Licensing System and  
11.19 Registry by the commissioner.

11.20 Sec. 13. **[58A.12] ENFORCEMENT AUTHORITIES, VIOLATIONS, AND**  
11.21 **PENALTIES.**

11.22 (a) In order to ensure the effective supervision and enforcement of this chapter, the  
11.23 commissioner may, pursuant to chapter 14:

11.24 (1) deny, suspend, revoke, condition, or decline to renew a license for a violation of  
11.25 this chapter, rules issued under this chapter, or order or directive entered under this chapter;

11.26 (2) deny, suspend, revoke, condition, or decline to renew a license if an applicant  
11.27 or licensee fails at anytime to meet the requirements of section 58A.05 or 58A.08, or  
11.28 withholds information or makes a material misstatement in an application for a license  
11.29 or renewal of a license;

11.30 (3) order restitution against persons subject to this chapter for violations of this  
11.31 chapter;

11.32 (4) impose fines on persons subject to this chapter pursuant to paragraphs (b)  
11.33 to (d); and

11.34 (5) issue orders or directives under this chapter as follows:

- 12.1           (i) order or direct persons subject to this chapter to cease and desist from conducting  
12.2 business, including immediate temporary orders to cease and desist;
- 12.3           (ii) order or direct persons subject to this chapter to cease any harmful activities or  
12.4 violations of this chapter, including immediate temporary orders to cease and desist;
- 12.5           (iii) enter immediate temporary orders to cease business under a license or interim  
12.6 license issued pursuant to the authority granted under section 58A.03, subdivision 4, if  
12.7 the commissioner determines that the license was erroneously granted or the licensee is  
12.8 currently in violation of this chapter; and
- 12.9           (iv) order or direct other affirmative action the commissioner considers necessary.
- 12.10          (b) The commissioner may impose a civil penalty on a mortgage loan originator or  
12.11 person subject to this chapter, if the commissioner finds, on the record after notice and  
12.12 opportunity for hearing, that the mortgage loan originator or person subject to this chapter  
12.13 has violated or failed to comply with any requirement of this chapter or any rule prescribed  
12.14 by the commissioner under this chapter or order issued under authority of this chapter.
- 12.15          (c) The maximum amount of penalty for each act or omission described in paragraph  
12.16 (b) is \$25,000.
- 12.17          (d) Each violation or failure to comply with any directive or order of the  
12.18 commissioner is a separate and distinct violation or failure.

12.19          Sec. 14. **[58A.13] SURETY BOND REQUIRED.**

12.20          Subdivision 1. Coverage, form, and rules. (a) Each mortgage loan originator must  
12.21 be covered by a surety bond meeting the requirements of this section. In the event that  
12.22 the mortgage loan originator is an employee or exclusive agent of a person subject to this  
12.23 chapter, the surety bond of the person subject to this chapter can be used in lieu of the  
12.24 mortgage loan originator's surety bond requirement.

12.25          (b) The surety bond shall provide coverage for each mortgage loan originator in  
12.26 an amount as prescribed in subdivision 2.

12.27          (c) The surety bond must be in a form as prescribed by the commissioner.

12.28          Subd. 2. Penal sum of surety bond. The penal sum of the surety bond must be  
12.29 maintained in an amount that reflects the dollar amount of loans originated as determined  
12.30 by the commissioner.

12.31          Subd. 3. Action on bond. When an action is commenced on a licensee's bond the  
12.32 commissioner may require the filing of a new bond.

12.33          Subd. 4. New bond. Immediately upon recovery upon any action on the bond  
12.34 the licensee shall file a new bond.

Sec. 15. **[58A.14] CONFIDENTIALITY.**

Subdivision 1. **Protections.** Except as otherwise provided in Public Law 110-289, section 1512, the requirements under chapter 13 or any federal law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by chapter 13 or federal law.

Subd. 2. **Agreements and sharing arrangements.** For purposes of this section, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the commissioner.

Subd. 3. **Nonapplicability of certain requirements.** Information or material that is subject to a privilege or confidentiality under subdivision 1 is not subject to:

(1) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

Subd. 4. **Coordination with Minnesota Government Data Practices Act.** Chapter 13 relating to the disclosure of confidential supervisory information or any information or material described in subdivision 1 that is inconsistent with subdivision 1 is superseded by the requirements of this section.

Subd. 5. **Public access to information.** This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that are included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Sec. 16. **[58A.15] INVESTIGATION AND EXAMINATION AUTHORITY.**

14.1           Subdivision 1. **Generally.** In addition to any authority allowed under this chapter,  
14.2 the commissioner may conduct investigations and examinations according to subdivisions  
14.3 2 to 9.

14.4           Subd. 2. **Authority to access information.** For purposes of initial licensing, license  
14.5 renewal, license suspension, license conditioning, license revocation or termination, or  
14.6 general or specific inquiry or investigation to determine compliance with this chapter, the  
14.7 commissioner may access, receive and use any books, accounts, records, files, documents,  
14.8 information or evidence including but not limited to:

14.9           (1) criminal, civil, and administrative history information, including nonconviction  
14.10 data;

14.11           (2) personal history and experience information including independent credit reports  
14.12 obtained from a consumer reporting agency described in United States Code, title 15,  
14.13 section 1681a(p); and

14.14           (3) any other documents, information, or evidence the commissioner considers  
14.15 relevant to the inquiry or investigation regardless of the location, possession, control, or  
14.16 custody of the documents, information, or evidence.

14.17           Subd. 3. **Investigation, examination, and subpoena authority.** For the purposes  
14.18 of investigating violations or complaints arising under this chapter, or for the purposes of  
14.19 examination, the commissioner may review, investigate, or examine a licensee, individual,  
14.20 or person subject to this chapter, as often as necessary in order to carry out the purposes  
14.21 of this chapter. The commissioner may direct, subpoena, or order the attendance of and  
14.22 examine under oath all persons whose testimony may be required about the loans or the  
14.23 business or subject matter of any such examination or investigation, and may direct,  
14.24 subpoena, or order such person to produce books, accounts, records, files, and any other  
14.25 documents the commissioner considers relevant to the inquiry.

14.26           Subd. 4. **Availability of books and records.** A licensee, individual, or person  
14.27 subject to this chapter shall make available to the commissioner upon request the books  
14.28 and records relating to the operations of the licensee, individual, or person subject to this  
14.29 chapter. The commissioner shall have access to the books and records and interview  
14.30 the officers, principals, mortgage loan originators, employees, independent contractors,  
14.31 agents, and customers of the licensee, individual, or person subject to this chapter  
14.32 concerning the licensee's, individual's, or person's business.

14.33           Subd. 5. **Reports and other information as directed.** A licensee, individual, or  
14.34 person subject to this chapter shall make or compile reports or prepare other information  
14.35 as directed by the commissioner in order to carry out the purposes of this section including  
14.36 but not limited to:

- 15.1           (1) accounting compilations;  
15.2           (2) information lists and data concerning loan transactions in a format prescribed  
15.3 by the commissioner; or  
15.4           (3) other information the commissioner considers necessary to carry out the  
15.5 purposes of this section.

15.6           Subd. 6. **Control access to records.** In making an examination or investigation  
15.7 authorized by this chapter, the commissioner may control access to documents and records  
15.8 of the licensee or person under examination or investigation. The commissioner may  
15.9 take possession of the documents and records or place a person in exclusive charge of  
15.10 the documents and records in the place where they are usually kept. During the period of  
15.11 control, no individual or person shall remove or attempt to remove any of the documents  
15.12 and records except pursuant to a court order or with the consent of the commissioner.  
15.13 Unless the commissioner has reasonable grounds to believe the documents or records  
15.14 of the licensee have been, or are at risk of being, altered or destroyed for purposes of  
15.15 concealing a violation of this chapter, the licensee or owner of the documents and records  
15.16 has access to the documents or records as necessary to conduct its ordinary business affairs.

15.17           Subd. 7. **Additional authority.** In order to carry out the purposes of this section,  
15.18 the commissioner may:

15.19           (1) retain attorneys, accountants, or other professionals and specialists as examiners,  
15.20 auditors, or investigators to conduct or assist in the conduct of examinations or  
15.21 investigations;

15.22           (2) enter into agreements or relationships with other government officials or  
15.23 regulatory associations in order to improve efficiencies and reduce regulatory burden  
15.24 by sharing resources, standardized or uniform methods or procedures, and documents,  
15.25 records, information, or evidence obtained under this section;

15.26           (3) use, hire, contract, or employ public or privately available analytical systems,  
15.27 methods, or software to examine or investigate the licensee, individual, or person subject  
15.28 to this chapter;

15.29           (4) accept and rely on examination or investigation reports made by other  
15.30 government officials, within or without this state; or

15.31           (5) accept audit reports made by an independent certified public accountant for the  
15.32 licensee, individual, or person subject to this chapter in the course of that part of the  
15.33 examination covering the same general subject matter as the audit and incorporate the  
15.34 audit report in the report of the examination, report of investigation or other writing of  
15.35 the commissioner.

Subd. 8. **Effect of authority.** The authority of this section remains in effect, whether a licensee, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

Subd. 9. **Withhold records.** A licensee, individual, or person subject to investigation or examination under this section shall not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

Sec. 17. **[58A.16] PROHIBITED ACTS AND PRACTICES.**

Subdivision 1. **Generally.** It is a violation of this chapter for a person or individual subject to this chapter to:

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

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

(3) obtain property by fraud or misrepresentation;

(4) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

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

(6) conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aide and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;

(7) fail to make disclosures as required by this chapter and any other applicable state or federal law or regulations;

(8) fail to comply with this chapter or rules adopted under this chapter or fail to comply with any other state or federal law or regulations applicable to any business authorized or conducted under this chapter;

(9) make, 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 make a false statement or knowingly and willfully make an omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with an investigation conducted by the commissioner or another governmental agency;



(11) make a payment, threat, or promise, directly or indirectly, to a person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make a payment threat or promise, directly or indirectly, to an appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) collect, charge, attempt to collect or charge, or use or propose an agreement purporting to collect or charge a fee prohibited by this chapter;

(13) cause or require 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) fail to truthfully account for money belonging to a party to a residential mortgage loan transaction.

Subd. 2. **Loan processor or underwriter activities.** An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

Sec. 18. **[58A.17] MORTGAGE CALL REPORTS.**

A mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which must be in the form and contain the information the Nationwide Mortgage Licensing System and Registry requires.

Sec. 19. **[58A.18] REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.**

The commissioner shall regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 58A.14.

Sec. 20. **[58A.20] UNIQUE IDENTIFIER SHOWN.**

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or Web sites, and any other documents as established by rule or order of the commissioner.

Sec. 21. **EFFECTIVE DATE.**

## ARTICLE 2

## CONFORMING AND TRANSITIONAL PROVISIONS RELATING TO MINNESOTA STATUTES, CHAPTER 58

Section 1. Minnesota Statutes 2008, section 58.04, subdivision 1, is amended to read:

**Subdivision 1. Residential mortgage originator licensing requirements.** (a)

No person shall act as a residential mortgage originator, or make residential mortgage loans without first obtaining a license from the commissioner according to the licensing procedures provided in this chapter.

(b) A licensee must be either a partnership, limited liability partnership, association, limited liability company, corporation, or other form of business organization, and must have and maintain at all times one of the following: approval as a mortgagee by either the federal Department of Housing and Urban Development or the Federal National Mortgage Association; a minimum net worth, net of intangibles, of at least \$250,000; or a surety bond or irrevocable letter of credit in the amount of \$50,000 amounts prescribed under section 58.08. Net worth, net of intangibles, must be calculated in accordance with generally accepted accounting principles.

(c) The following persons are exempt from the residential mortgage originator licensing requirements:

(1) a person who is not in the business of making residential mortgage loans and who makes no more than three such loans, with its own funds, during any 12-month period;

(2) a financial institution as defined in section 58.02, subdivision 10;

(3) an agency of the federal government, or of a state or municipal government;

(4) an employee or employer pension plan making loans only to its participants;

(5) a person acting in a fiduciary capacity, such as a trustee or receiver, as a result of a specific order issued by a court of competent jurisdiction; or

(6) a person exempted by order of the commissioner.

Sec. 2. Minnesota Statutes 2009 Supplement, section 58.06, subdivision 2, is amended to read:

Subd. 2. **Application contents.** (a) The application must contain the name and complete business address or addresses of the license applicant. The license applicant must be a partnership, limited liability partnership, association, limited liability company, corporation, or other form of business organization, and the application must contain the names and complete business addresses of each partner, member, director, and principal

officer. The application must also include a description of the activities of the license applicant, in the detail and for the periods the commissioner may require.

(b) A residential mortgage originator applicant must submit ~~one of the following:~~

~~(1) evidence which shows, to the commissioner's satisfaction, that either the federal Department of Housing and Urban Development or the Federal National Mortgage Association has approved the residential mortgage originator applicant as a mortgagee;~~

~~(2) a surety bond or irrevocable letter of credit in the amount of not less than \$50,000 in a form approved by the commissioner, issued by an insurance company or bank authorized to do so in this state. The bond or irrevocable letter of credit must be available for the recovery of expenses, fines, and fees levied by the commissioner under this chapter and for losses incurred by borrowers. The bond or letter of credit must be submitted with the license application, and evidence of continued coverage must be submitted with each renewal. Any change in the bond or letter of credit must be submitted for approval by the commissioner within ten days of its execution; or~~

~~(3) a copy of the residential mortgage originator applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statements of changes in shareholder equity, and statement of changes in financial position. Financial statements must be as of a date within 12 months of the date of application.~~ a surety bond that meets the requirements of section 58.08, subdivision 1a.

(c) The application must also include all of the following:

(1) an affirmation under oath that the applicant:

(i) is in compliance with the requirements of section 58.125;

~~(ii) will maintain a perpetual roster of individuals employed as residential mortgage originators, including employees and independent contractors, which includes the dates that mandatory testing, initial education, and continuing education were completed. In addition, the roster must be made available to the commissioner on demand, within three business days of the commissioner's request;~~

~~(iii)~~ (ii) will advise the commissioner of any material changes to the information submitted in the most recent application within ten days of the change;

~~(iv)~~ (iii) will advise the commissioner in writing immediately of any bankruptcy petitions filed against or by the applicant or licensee;

~~(v)~~ (iv) will maintain at all times ~~either a net worth, net of intangibles, of at least \$250,000 or a surety bond or irrevocable letter of credit in the amount of at least \$50,000~~ \$100,000;

~~(vi)~~ (v) complies with federal and state tax laws; and

20.1           ~~(vii)~~ (vi) complies with sections 345.31 to 345.60, the Minnesota unclaimed  
20.2 property law;

20.3           (2) information as to the mortgage lending, servicing, or brokering experience of the  
20.4 applicant and persons in control of the applicant;

20.5           (3) information as to criminal convictions, excluding traffic violations, of persons in  
20.6 control of the license applicant;

20.7           (4) whether a court of competent jurisdiction has found that the applicant or persons  
20.8 in control of the applicant have engaged in conduct evidencing gross negligence, fraud,  
20.9 misrepresentation, or deceit in performing an act for which a license is required under  
20.10 this chapter;

20.11           (5) whether the applicant or persons in control of the applicant have been the subject  
20.12 of: an order of suspension or revocation, cease and desist order, or injunctive order, or  
20.13 order barring involvement in an industry or profession issued by this or another state or  
20.14 federal regulatory agency or by the Secretary of Housing and Urban Development within  
20.15 the ten-year period immediately preceding submission of the application; and

20.16           (6) other information required by the commissioner.

20.17           Sec. 3. Minnesota Statutes 2008, section 58.08, is amended by adding a subdivision to  
20.18 read:

20.19           Subd. 1a. **Residential mortgage originators.** (a) An applicant for a residential  
20.20 mortgage originator license must file with the department a surety bond in the amount of  
20.21 \$100,000, issued by an insurance company authorized to do so in this state. The bond  
20.22 must cover all mortgage loan originators who are employees or independent agents of  
20.23 the applicant. The bond must be available for the recovery of expenses, fines, and fees  
20.24 levied by the commissioner under this chapter and for losses incurred by borrowers as  
20.25 a result of a licensee's noncompliance with the requirements of this chapter, sections  
20.26 325D.43 to 325D.48, and 325F.67 to 325F.69, or breach of contract relating to activities  
20.27 regulated by this chapter.

20.28           (b) The bond must be submitted with the originator's license application and  
20.29 evidence of continued coverage must be submitted with each renewal. Any change in the  
20.30 bond must be submitted for approval by the commissioner, within ten days of its execution.  
20.31 The bond or a substitute bond shall remain in effect during all periods of licensing.

20.32           (c) Upon filing of the mortgage call report as required by section 58A.17, a licensee  
20.33 shall maintain or increase its surety bond to reflect the total dollar amount of the closed  
20.34 residential mortgage loans originated in this state in the preceding year according to the  
20.35 table in this paragraph. A licensee may decrease its surety bond according to the table in

21.1 this paragraph if the surety bond required is less than the amount of the surety bond on  
21.2 file with the department.

| 21.3 | <u>Dollar Amount of Closed Residential</u> | <u>Surety Bond Required</u> |
|------|--------------------------------------------|-----------------------------|
| 21.4 | <u>Mortgage Loans</u>                      |                             |
| 21.5 | <u>\$0 to \$5,000,000</u>                  | <u>\$100,000</u>            |
| 21.6 | <u>\$5,000,000.01 to \$10,000,000</u>      | <u>\$125,000</u>            |
| 21.7 | <u>\$10,000,000.01 to \$25,000,000</u>     | <u>\$150,000</u>            |
| 21.8 | <u>Over \$25,000,000</u>                   | <u>\$200,000</u>            |

21.9 For purposes of this subdivision, "mortgage loan originator" has the meaning given  
21.10 the term in section 58A.02, subdivision 7.

21.11 Sec. 4. Minnesota Statutes 2008, section 58.09, is amended to read:

21.12 **58.09 TERM OF LICENSE.**

21.13 ~~Initial~~ Licenses for residential mortgage originators and residential mortgage  
21.14 servicers issued under this chapter expire on ~~July 31, 2001,~~ December 31 and are  
21.15 renewable on ~~August 1, 2001, and on August 1~~ January 1 of each ~~odd-numbered~~ year  
21.16 after that date. ~~A new licensee whose license expires less than 12 months from the date~~  
21.17 ~~of issuance shall pay a fee equal to one-half the applicable initial license fee set forth in~~  
21.18 ~~section 58.10, subdivision 1, clause (1) or (3).~~

21.19 Sec. 5. Minnesota Statutes 2008, section 58.10, subdivision 1, is amended to read:

21.20 Subdivision 1. **Amounts.** The following fees must be paid to the commissioner:

- 21.21 (1) for ~~an initial~~ a residential mortgage originator license, ~~\$2,125~~ \$1,000, \$50 of  
21.22 which is credited to the consumer education account in the special revenue fund;  
21.23 (2) for a renewal license, ~~\$1,125~~ \$500, \$50 of which is credited to the consumer  
21.24 education account in the special revenue fund;  
21.25 (3) for ~~an initial~~ a residential mortgage servicer's license, ~~\$1,000~~ \$500;  
21.26 (4) for a renewal license, ~~\$500~~ \$250; and  
21.27 (5) for a certificate of exemption, \$100.

21.28 Sec. 6. Minnesota Statutes 2008, section 58.11, is amended to read:

21.29 **58.11 LICENSE RENEWAL.**

21.30 Subdivision 1. **Term.** Licenses are renewable on ~~August 1, 2001, and on August 1~~  
21.31 January 1 of each ~~odd-numbered~~ year ~~after that date.~~

21.32 Subd. 2. **Timely renewal.** (a) A person whose application is properly and timely  
21.33 filed who has not received notice of denial of renewal is considered approved for renewal

22.1 and the person may continue to transact business as a residential mortgage originator or  
22.2 servicer whether or not the renewed license has been received on or before ~~August~~ January  
22.3 1 of the renewal year. Application for renewal of a license is considered timely filed if  
22.4 received by the commissioner by, or mailed with proper postage and postmarked by, ~~July~~  
22.5 December 15 of the renewal year. An application for renewal is considered properly filed  
22.6 if made upon forms duly executed and sworn to, accompanied by fees prescribed by this  
22.7 chapter, and containing any information that the commissioner requires.

22.8 (b) A person who fails to make a timely application for renewal of a license and  
22.9 who has not received the renewal license as of ~~August~~ January 1 of the renewal year is  
22.10 unlicensed until the renewal license has been issued by the commissioner and is received  
22.11 by the person.

22.12 Subd. 3. **Contents of renewal application.** Application for the renewal of an  
22.13 existing license must contain the information specified in section 58.06, subdivision 2;  
22.14 however, only the requested information having changed from the most recent prior  
22.15 application need be submitted.

22.16 Subd. 4. **Cancellation.** A licensee ceasing an activity or activities regulated by this  
22.17 chapter and desiring to no longer be licensed shall so inform the commissioner in writing  
22.18 and, at the same time, surrender the license and all other symbols or indicia of licensure.  
22.19 The licensee shall include a plan for the withdrawal from regulated business, including a  
22.20 timetable for the disposition of the business.

22.21 Sec. 7. **ASSESSMENT.**

22.22 The commissioner may levy a pro rata assessment on institutions licensed under  
22.23 Minnesota Statutes, chapter 58, to recover the costs to the Department of Commerce  
22.24 for administering the licensing and registration requirements of Minnesota Statutes,  
22.25 section 58A.10. The assessment amount must be determined by dividing those costs by  
22.26 the number of licensees.

22.27 The commissioner shall levy the assessments and notify each institution of the  
22.28 amount of the assessment being levied by September 30, 2010. The institution shall pay  
22.29 the assessment to the department no later than November 30, 2010. If an institution fails  
22.30 to pay its assessment by this date, its license may be suspended by the commissioner  
22.31 until it is paid in full.

22.32 This section expires December 1, 2010.

22.33 Sec. 8. **RESIDENTIAL MORTGAGE ORIGINATORS AND SERVICERS;**  
22.34 **TRANSITIONAL LICENSE FEE AND TERMS.**

23.1           A residential mortgage originator licensee and a residential mortgage service  
23.2           licensee operating under a valid license under Minnesota Statutes 2008, chapter 58,  
23.3           with an expiration date of July 31, 2011, shall pay a prorated renewal fee of \$200 for a  
23.4           residential mortgage originator, and \$100 for a residential mortgage servicer. The prorated  
23.5           license renewal fee must be paid by December 31, 2010, and such payment extends the  
23.6           license term until December 31, 2011.

23.7           Sec. 9. **APPROPRIATION.**

23.8           \$261,000 in fiscal year 2011 is appropriated from the general fund to the  
23.9           commissioner of commerce for implementing this act. The base appropriation for this  
23.10          program is \$138,000 in fiscal year 2012 and \$142,000 in fiscal year 2013.

23.11          Sec. 10. **REPEALER.**

23.12          Minnesota Statutes 2009 Supplement, section 58.126, is repealed.

23.13          Sec. 11. **EFFECTIVE DATE.**

23.14          This article is effective July 31, 2010.