

AN ACT

ENTITLED, An Act to revise certain provisions regarding the mortgage lender business and to provide for fees and penalties related thereto.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 54-14-12 be amended to read as follows:

54-14-12. Terms used in this chapter mean:

- (1) "Depository institution," the same meaning as provided in 12 U.S.C. § 1813(c) as of January 1, 2009, and includes any credit union;
- (2) "Director," the director of the Division of Banking of the Department of Revenue and Regulation;
- (3) "Division," the Division of Banking of the Department of Revenue and Regulation;
- (4) "Federal banking agencies," 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;
- (5) "Immediate family member," a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchildren, stepsibling, and adoptive relationship;
- (6) "Individual," a natural person;
- (7) "Licensee," the person holding a license provided by this chapter;
- (8) "Mortgage lender," any person who, for valuable consideration, originates, sells, or services mortgages, or holds himself, herself, or itself out as a person who, for valuable consideration, originates, sells, or services mortgages, other than those exempt pursuant to § 54-14-21;
- (9) "Mortgage broker," any person who acts as a mortgage loan originator and has not less than a ten percent interest in a mortgage brokerage;

- (10) "Mortgage brokerage," any person engaged in placing mortgage loans with investors for a fee, but does not service such loans;
- (11) "Mortgage lending activities," for compensation, either directly or indirectly, accepting or offering to accept applications for making mortgage loans;
- (12) "Nationwide mortgage licensing system and registry," 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;
- (13) "Regional revolving loan fund," any regional revolving loan fund with a service area of at least five South Dakota counties, a designated staff for loan processing and servicing, a loan portfolio of at least one million dollars, and which is governed by a board of directors that meets at least quarterly;
- (14) "Residential mortgage loan," 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 12 C.F.R. § 226.2(19), or residential real estate upon which is constructed or intended to be constructed a dwelling;
- (15) "Unique identifier," a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Section 2. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, loan processor or underwriter, means any 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 according to this chapter, or a person exempt according to this chapter. Clerical or support duties subsequent to the receipt of an application

include the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan; and 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 mortgage loan rates or terms.

No individual engaging solely in loan processor or underwriter activities may 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.

Section 3. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, mortgage loan originator, means an individual who for compensation or gain or in the expectation of compensation or gain takes a mortgage loan application or offers or negotiates terms of a mortgage loan.

A mortgage loan originator does not include:

- (1) An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 2 of this Act;
- (2) An individual or entity that performs only real estate brokerage activities and is licensed or registered in accordance with applicable South Dakota law, unless the individual or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; or
- (3) Any individual or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D) as of January 1, 2009.

Section 4. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as

follows:

For the purposes of this chapter, the term, real estate brokerage activity, means 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 registered or licensed as a real estate agent or real estate broker under any applicable law;
- (5) Offering to engage in any activity, or act in any capacity, described in this section.

Section 5. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, registered mortgage loan originator, means any individual who:

- (1) Meets the definition of mortgage loan originator and is an employee of:
  - (a) A depository institution;
  - (b) A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
  - (c) An institution regulated by the Farm Credit Administration; and
- (2) Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

Section 6. That § 54-14-13 be amended to read as follows:

54-14-13. No person may act as a mortgage lender, mortgage brokerage, mortgage broker, or mortgage loan originator in this state or use the title, mortgage lender, mortgage brokerage, mortgage broker, or mortgage loan originator with respect to any property located in South Dakota without first obtaining and maintaining a license according to the requirements of this chapter. Each person shall be licensed or registered, and maintain a unique identifier through the nationwide mortgage licensing system and registry.

Section 7. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The director may not issue a mortgage loan originator license unless the director makes the following findings:

- (1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction. No revocation for which there has been a subsequent formal vacation of the revocation may be considered by the director;
- (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:
  - (a) During the seven year period preceding the date of the application for licensing and registration; or
  - (b) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

No pardon of a conviction may be considered a conviction for purposes of this subdivision;

- (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 subdivision, an applicant shows a lack of financial responsibility if the applicant has shown a disregard in the management of his or her own financial affairs. Factors to be considered may include current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other governmental liens and filings; foreclosures within the past three years; or a pattern of seriously delinquent accounts within the past three years;

- (4) The applicant has completed the pre-licensing education requirement provided for by rule pursuant to § 54-14-31;
- (5) The applicant has passed a written test that meets the test requirement provided for by rule pursuant to § 54-14-31; and
- (6) The applicant has met the surety bond requirement as required by § 54-14-24 and provided for by rule pursuant to § 54-14-24.

Section 8. That § 54-14-15 be amended to read as follows:

54-14-15. In connection with an application for licensing as a mortgage lender, mortgage broker, or mortgage loan originator, the applicant shall furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including:

- (1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state, national, and international criminal history background check; and
- (2) Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain:
  - (a) An independent credit report from a consumer reporting agency described in 15

U.S.C. § 1681(a) as of January 1, 2009; and

- (b) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

The Division of Banking may require a state and federal criminal background check for any licensee who is the subject of a disciplinary investigation by the division. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

The director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency. The director 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 director.

Section 9. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The minimum standards for license renewal for mortgage loan originators shall include the following:

- (1) The mortgage loan originator continues to meet the minimum standards for license issuance under subdivisions (1) to (5), inclusive, of section 7 of this Act; and
- (2) The mortgage loan originator has satisfied the annual continuing education requirements provided by rule pursuant to § 54-14-31.

Section 10. That § 54-14-16 be amended to read as follows:

54-14-16. The applicant for an initial license shall submit a fee in the amount of not more than two hundred fifty dollars for a mortgage loan originator, not more than five hundred dollars for a

mortgage broker or mortgage brokerage license, and not more than one thousand dollars for a mortgage lender license. The director shall establish the fees by rules promulgated pursuant to chapter 1-26.

Section 11. That § 54-14-19 be amended to read as follows:

54-14-19. Any application for renewal of a license under this chapter shall be postmarked to the director by December first and shall be accompanied by a fee to be established by the director by rules promulgated pursuant to chapter 1-26. The fee to transact business as a mortgage loan originator may not exceed two hundred fifty dollars. The fee to transact business as a mortgage broker or mortgage brokerage may not exceed five hundred dollars. The fee to transact business as a mortgage lender may not exceed one thousand dollars. Any licensee or registrant that files for renewal after December first and before January first of the next calendar year shall pay a late fee in addition to the renewal fee. The late fee, not to exceed twenty-five percent of the renewal fee, shall be established by the director by rules promulgated pursuant to chapter 1-26. After January first no license may be issued unless an application is filed pursuant to §§ 54-14-13 to 54-14-16, inclusive.

Section 12. That § 54-14-21 be amended to read as follows:

54-14-21. The following entities are exempt from the requirement of a mortgage lender, mortgage brokerage, or mortgage broker license as required by this chapter:

- (1) Any state bank and its subsidiary;
  - (2) Any national bank and its subsidiary;
  - (3) Any bank holding company and its subsidiary;
  - (4) Any other federally insured financial institution, and its holding company and subsidiary;
- and
- (5) Any South Dakota chartered trust company.

Any registered mortgage loan originator, if acting for a depository institution, is exempt from the

provisions of this chapter.

Section 13. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

No loan processor or underwriter who is an independent contractor may engage in the activities of a loan processor or underwriter unless the loan processor or underwriter obtains and maintains a license under this chapter. Each loan processor or underwriter who is an independent contractor licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

Section 14. That § 54-14-24 be amended to read as follows:

54-14-24. Each mortgage lender, mortgage brokerage, mortgage broker, or mortgage loan originator shall submit with any application, and maintain at all times, a surety bond in an amount that reflects the total dollar amount of loans originated by the licensee and the licensee's employees and agents, but not less than twenty-five thousand dollars. The surety bond shall be in a form and amount as prescribed by the director.

Each mortgage loan originator and mortgage broker shall be covered by a surety bond in accordance with this section. If the mortgage loan originator or mortgage broker is an employee or exclusive agent of a person subject to this chapter, the surety bond of such person can be used in lieu of the mortgage loan originator or mortgage broker's surety bond requirement. The surety bond shall provide coverage for each mortgage loan originator and mortgage broker in an amount prescribed by this section.

The bond shall be issued by a surety company qualified to do business as a surety in this state. The bond shall be in favor of this state for the use of this state and any person who has a cause of action under this chapter against the licensee. The bond shall be conditioned on:

- (1) The licensee's faithful performance under this chapter and any rules adopted pursuant to

this chapter; and

- (2) The payment of any amounts that are due to the state or another person during the time the bond is in force.

The bond may be continuous, and regardless of how long the bond remains in force, the aggregate liability of a surety to all persons damaged by a licensee's violation of the provisions of this chapter may not exceed the amount of the bond. The bond may be cancelled by the surety upon thirty days notice to the licensee and the director, and the surety's liability on the bond shall also terminate upon the effective date of any suspension or revocation of the license.

If an action is commenced on a licensee's bond, the director may require the filing of a new bond. Immediately upon recovery in any action on the bond the licensee shall file a new bond.

The director may promulgate rules pursuant to chapter 1-26 with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this chapter.

Section 15. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The director may impose a civil penalty in an amount not to exceed one thousand dollars upon any person acting as a mortgage lender, mortgage brokerage, mortgage broker, or mortgage loan originator in this state without the required license or registration. Each instance of operating without a license, or holding oneself out as being authorized to conduct the business authorized by this chapter, constitutes a separate violation of this chapter and subjects any such person to a civil penalty for each violation. A civil penalty for a series of violations may not exceed twenty-five thousand dollars.

Section 16. That § 54-14-27 be amended to read as follows:

54-14-27. The director may condition, deny, decline to renew, suspend for a period not to exceed six months, or revoke a license if the director finds:

- (1) Any fact or condition exists that, if it had existed at the time the licensee applied for its license, would have been grounds for denying the application;
- (2) The licensee violated any provisions of this chapter or any rule or order promulgated by the director;
- (3) The licensee refuses to permit the director to make any examination authorized by this chapter or rule promulgated pursuant to this chapter, or any federal statute, rule, or regulation pertaining to mortgage lending;
- (4) The licensee willfully fails to make any report required of this chapter;
- (5) The competence, experience, character, or general fitness of the licensee indicates that it is not in the public interest to permit the licensee to continue to conduct business;
- (6) The bond of the licensee has been revoked or cancelled by the surety;
- (7) The licensee or any partner, officer, director, manager, or employee of the licensee has been convicted of a felony or a misdemeanor involving any aspect of the financial services business;
- (8) The licensee or any partner, officer, director, manager, or employee of the licensee has had a license substantially equivalent to a license under this chapter, and issued by another state, denied, revoked or suspended under the laws of that state;
- (9) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending, or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

The director may revoke a license for good cause pursuant to chapter 1-26. If the licensee is the holder of more than one license, the director may revoke any or all of the licenses.

Section 17. That § 54-14-31 be amended to read as follows:

54-14-31. The director may promulgate rules pursuant to chapter 1-26 for the pre-licensing education, written testing, continuing education, personal history, and experience checks of mortgage brokers, mortgage brokerages, mortgage lenders, and mortgage loan originators, and for the management and administration of licenses and registrations issued pursuant to this chapter.

The director may promulgate rules pursuant to chapter 1-26 to establish fees required for the licensure and renewal of licenses through the nationwide mortgage licensing system and registry in addition to those fees established in §§ 54-14-16 and 54-14-19. Such fees may not exceed five hundred dollars.

Section 18. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The director may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

Section 19. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The director shall establish a process through rules promulgated pursuant to chapter 1-26 to allow mortgage loan originators and mortgage brokers to challenge information entered into the nationwide mortgage licensing system and registry by the director.

Section 20. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The following provisions apply to the sharing of information collected and retained by the director during the administration of this chapter:

- (1) Except as otherwise provided in 12 U.S.C. § 5111 as of January 1, 2009, the requirements under any federal law or § 51A-2-35 regarding 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 by federal law or § 51A-2-35;
- (2) No information or material that is subject to a privilege or confidentiality under this section is subject to:
  - (a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
  - (b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to 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.

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 is included in the nationwide mortgage licensing system and registry for access by the public.

Section 21. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

Each mortgage lender, mortgage brokerage, mortgage broker, and mortgage loan originator shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the director establishes through rules promulgated pursuant to chapter 1-26.

Section 22. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The director shall report on a regular basis 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 20 of this Act.

Section 23. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The following are exempt from the requirement of obtaining a mortgage loan originator license:

- (1) Any individual who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; or
- (3) A licensed attorney who negotiates the terms of a 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, mortgage brokerage, mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator.

Section 24. That § 54-14-20 be amended to read as follows:

54-14-20. The State of South Dakota, any political subdivision of the state, and any quasi-governmental organization created by an executive order of the State of South Dakota and any subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-22; any nonprofit United States Treasury Community Development Financial Institution, Small Business Administration Certified Development Company, or Regional Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial development corporation formed pursuant to § 9-12-11 or 9-27-37 is exempt from the requirements of this chapter.

Section 25. That § 54-14-22 be amended to read as follows:

54-14-22. Any person shall complete the equivalent of two years of service under the supervision and direction of a licensed mortgage broker, mortgage brokerage, or mortgage lender, or another jurisdiction's equivalent thereof, before that person is eligible to apply for a mortgage broker's, mortgage brokerage's, or mortgage lender's license. No mortgage broker, mortgage brokerage, or mortgage lender is eligible for a license without such training and experience. The director may promulgate rules pursuant to chapter 1-26 with regard to such training and experience. Any person licensed as a mortgage broker or mortgage lender with the director prior to July 1, 2007, is exempt from this requirement.

Section 26. That § 54-14-25 be amended to read as follows:

54-14-25. Any person, who without first obtaining a license or registration under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily acts as, a mortgage broker, mortgage brokerage, mortgage lender, or mortgage loan originator in this state is guilty of a Class 2 misdemeanor and may be held responsible for all costs of prosecution, including restitution.

Section 27. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

Any insurance company lending money for nonresidential mortgage loans, shall apply for, on forms prescribed by the director, and maintain, a mortgage lending license and is subject to the tax as provided in § 54-14-30. Any insurance company required to obtain a license under this section shall become licensed no later than December 31, 2009. The tax required in § 54-14-30 shall be imposed only on those loans funded after December 31, 2009. The requirement of a surety bond as provided in § 54-14-24 does not apply to an insurance company licensed under this section.

Any individual solely employed by or solely acting as an intermediary on behalf of an insurance company licensed pursuant to this section is not required to hold an individual license under this chapter. Any individual acting as an intermediary, on behalf of an insurance company licensed as provided in this section, shall be disclosed to the director during the application process and annually thereafter.

The requirements of registration with the nationwide mortgage licensing system and registry do not apply to any insurance company or its employees or intermediaries licensed pursuant to this section.

Section 28. That chapter 54-14 be amended by adding thereto a NEW SECTION to read as follows:

The effective dates of section 7 and 9 of this Act are as follows:

- (1) July 31, 2010, for any individual other than an individual described in subdivision (2); and
- (2) December 31, 2010, for any individual licensed as a mortgage loan originator as of July 1, 2009.

An Act to revise certain provisions regarding the mortgage lender business and to provide for fees and penalties related thereto.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1060

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1060  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State