



# OHIO LEGISLATIVE SERVICE COMMISSION

## Bill Analysis

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(As Passed by the House)

**Reps.** Blessing, Seitz, Wiggam, Sprague, Brenner, Hughes, Dever, Carfagna, Hambley, Miller, Patton, Schaffer, Scherer, Young

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## BILL SUMMARY

- Limits the application of the existing "Mortgage Loan Law" to unsecured loans, and loans secured by other than residential real estate or a dwelling.
- Creates the Ohio Residential Mortgage Lending Act (RMLA) for the purpose of regulating all nondepository lending secured by residential real estate.

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## CONTENT AND OPERATION

### Modification of the "Mortgage Loan Law"

What is currently referred to as the "Mortgage Loan Law," R.C. 1321.51 to 1321.60, governs nondepository lenders that make (1) loans secured by a mortgage on a borrower's real estate that is a first lien or other than a first lien on the real estate, (2) loans secured by other than real estate, (3) loans secured by any combination of mortgages and security interests, and (4) unsecured loans. Persons making such loans must obtain a certificate of registration from the Division of Financial Institutions. Individuals employed or compensated by those lenders to conduct the business of making loans must be licensed by the Division as mortgage loan originators.

The bill limits the application of the "Mortgage Loan Law" to unsecured loans, and loans secured by other than residential real estate or a dwelling. (For purposes of this analysis, this new law is referred to as the "General Loan Law.") Under the bill, nondepository lenders that make loans secured by real estate would instead be governed by the proposed Ohio Residential Mortgage Lending Act (see below).

#### Registration and licensure

Under the bill, a lender is permitted to make loans in accordance with the bill's General Loan Law provisions if the lender obtains a certificate of registration issued by the Superintendent of Financial Institutions. The bill removes the current prohibition against unregistered lending, a violation of which is a fifth degree felony. In addition, the bill eliminates the provisions that specify an unregistered lender (1) does not have a right to interest on the loan, (2) is subject to liability for excess interest charged if the lender subsequently sells or assigns the loan, and (3) may be subject to administrative action by the Superintendent of Financial Institutions. Under the bill, lenders are not subject to the current bonding requirement. They are also not subject to the duty to



reasonably supervise employees and establish reasonable procedures designed to avoid violations of applicable state and federal consumer and lending laws.<sup>1</sup>

The bill eliminates the "mortgage loan originator" license which, under current law, covers individuals who are compensated by a registrant to take an application for a loan, assist a borrower in applying for a loan, negotiate the terms of a loan, or issue a commitment for a loan. The bill also eliminates the Superintendent's authority to issue a temporary license to an out-of-state mortgage loan originator.<sup>2</sup>

### **Advertising**

Continuing law requires that advertising for loans subject to the General Loan Law not be "false, misleading, or deceptive." The bill, however, removes the following description of what "false, misleading, or deceptive" advertising includes:

(1) Placing, or causing to be placed, any advertisement indicating that special terms, reduced rates, guaranteed rates, particular rates, or any other special feature of mortgage loans is available unless the advertisement clearly states any limitations that apply (it is possible that this entire criterion applies only to mortgage loans, and so is a conforming change, but it is unclear);

(2) Placing, or causing to be placed, any advertisement containing a rate or special fee offer that is not a bona fide available rate or fee.<sup>3</sup>

### **Conforming changes**

Because the "General Loan Law" would no longer apply to loans secured by real estate or a dwelling, the bill makes numerous conforming changes that remove all provisions expressly applicable to such loans, including the duties of and prohibited actions by registrants.<sup>4</sup> It also makes appropriate cross-reference changes.

### **Ohio Residential Mortgage Lending Act (RMLA)**

This portion of the bill, enacted as a new R.C. Chapter 1322., establishes the Ohio Residential Mortgage Lending Act (RMLA) for the purpose of regulating all

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<sup>1</sup> R.C. 1321.51(C), 1321.52(A) through (D) and (G), 1321.53, and 1321.551(F); R.C. 1321.533, repealed, and 1321.99(E).

<sup>2</sup> R.C. 1321.51, 1321.52(E), 1321.531, 1321.532, and 1321.551; R.C. 1321.533, 1321.534, 1321.535, 1321.536, 1321.537, and 1321.538, all repealed.

<sup>3</sup> R.C. 1321.60(A).

<sup>4</sup> R.C. 1321.51, 1321.522, 1321.531, 1321.532, 1321.54, 1321.55, 1321.57, 1321.58, 1321.59, and 1321.60; R.C. 1321.521, 1321.552, 1321.592, 1321.593, and 1321.594, all repealed.



nondepository lending secured by residential real estate. It provides for the registration of mortgage lenders and mortgage brokers and the licensure of mortgage loan originators.

The RMLA is based on existing R.C. Chapter 1322., which regulates mortgage brokers and loan originators. Following an analysis of the major provisions of the RMLA, a chart indicating the sections of current law that have been renumbered and modified, as well as the organization of the RMLA, is provided.

### **Key definitions**

**Mortgage broker** means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration. For these purposes, "attempting to obtain or assisting in obtaining" a mortgage loan includes referring a borrower to a mortgage lender, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.<sup>5</sup>

**Mortgage lender** means an entity that consummates a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a residential mortgage loan applicant.<sup>6</sup>

**Mortgage loan originator** means an individual who, for compensation or gain, or in the expectation of compensation or gain, does any of the following:<sup>7</sup>

--Takes a residential mortgage loan application;

--Assists or offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs;

--Offers or negotiates terms of a residential mortgage loan;

--Issues or offers to issue a commitment for a residential mortgage loan to a buyer.

**Mortgage loan originator** does **not** include any of the following:<sup>8</sup>

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<sup>5</sup> R.C. 1322.01(CC).

<sup>6</sup> R.C. 1322.01(DD).

<sup>7</sup> R.C. 1322.01(EE)(1).



--An individual who performs purely "administrative or clerical tasks" on behalf of a mortgage loan originator. "**Administrative or clerical tasks**" is defined as the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, without performing any analysis of the information, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.<sup>9</sup>

--A person licensed under the Real Estate Brokers Law (R.C. Chapter 4735.), or under the similar law of another state, who performs only real estate brokerage activities permitted by that license, provided the person is not compensated by a mortgage lender, mortgage broker, mortgage loan originator, or by an agent of any of them;

--A person solely involved in extensions of credit relating to timeshare plans;

--An employee of a mortgage lender or mortgage broker who acts solely as a "loan processor or underwriter" and who does not represent to the public that the employee can or will perform any of the activities of a mortgage loan originator. "**Loan processor or underwriter**" means an individual who, with respect to the origination of a residential mortgage loan, performs administrative or clerical tasks as an employee at the direction of and subject to the supervision of a mortgage lender or mortgage broker. For this purpose, "origination of a residential mortgage loan" means all activities related to a residential mortgage loan, from the taking of a loan application through the completion of all required loan closing documents and the funding of the loan.<sup>10</sup>

--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, a mortgage broker, or another mortgage loan originator, or by an agent of any of them;

--Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if, in connection with financing those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not: (1) offer or negotiate the residential mortgage loan rates or terms, (2) provide any counseling with borrowers about residential mortgage loan rates or terms, (3) receive any payment or fee from any company or individual for assisting the borrower obtain

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<sup>8</sup> R.C. 1322.01(EE)(2).

<sup>9</sup> .C. 1322.01(A).

<sup>10</sup> R.C. 1322.01(AA).



or apply for financing to purchase the home or industrialized unit, or (4) assist the borrower in completing a residential mortgage loan application;

--An individual employed by a nonprofit organization that is recognized as tax exempt under 26 U.S.C. 501(c)(3) and whose primary activity is the construction, remodeling, or rehabilitation of homes for use by low-income families, provided (1) the organization makes no-profit mortgage loans or mortgage loans at 0% interest to low-income families and no fees accrue directly to the organization or individual employed by the organization from those mortgage loans and (2) the U.S. Department of Housing and Urban Development does not deny this exemption.

**Nationwide mortgage licensing system and registry (NMLS&R)** means a 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 persons providing nondepository financial services.<sup>11</sup>

**Registered mortgage loan originator** means an individual that (1) is a mortgage loan originator and 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 NMLS&R. "**Unique identifier**" is defined as a number or other identifier assigned by the NMLS&R.<sup>12</sup>

**Registrant** means any person that has been issued a mortgage lender or mortgage broker certificate of registration under the bill.<sup>13</sup>

**Residential mortgage loan** means any loan that (1) is primarily for personal, family, or household use and is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Ohio and (2) is provided and secured by a first lien holder secured creditor or by a second lien holder secured creditor. "**Dwelling**" includes a single condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence, whether or not it is attached to real property.<sup>14</sup>

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<sup>11</sup> R.C. 1322.01(FF).

<sup>12</sup> R.C. 1322.01(JJ) and (PP).

<sup>13</sup> R.C. 1322.01(KK).

<sup>14</sup> R.C. 1322.01(N) and (LL).

## Exemptions from the RMLA

The RMLA does not apply to any of the following:<sup>15</sup>

--Any entity chartered and lawfully doing business under the authority of any law of Ohio, another state, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity that is regulated by a federal banking agency and is owned and controlled by a depository institution;

--A consumer reporting agency that is in substantial compliance with the federal Fair Credit Reporting Act;

--Any political subdivision, or any governmental or other public entity, corporation, instrumentality, or agency, in or of the United States or any state;

--A college or university or controlled entity of a college or university;

--Any entity created solely for the purpose of securitizing loans secured by an interest in real estate, provided the entity does not service the loans. For this purpose, "securitizing" means the packaging and sale of mortgage loans as a unit for sale as investment securities, but only to the extent of those activities.

--Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if, in connection with obtaining financing by others for those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not: (1) offer or negotiate the residential mortgage loan rates or terms, (2) provide any counseling with borrowers about residential mortgage loan rates or terms, (3) receive any payment or fee from any company or individual for assisting the borrower to obtain or apply for financing to purchase the home or unit, or (4) assist the borrower in completing the residential mortgage loan application.

--A bona fide nonprofit organization that is recognized as tax exempt under 26 U.S.C. 501(c)(3) and whose primary activity is the construction, remodeling, or rehabilitation of homes for use by low-income families, provided that (1) the organization makes no-profit mortgage loans or mortgage loans at 0% interest to low-income families and no fees accrue directly to the organization from those mortgage loans and (2) the U.S. Department of Housing and Urban Development does not deny this exemption;

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<sup>15</sup> R.C. 1322.04.



--A credit union service organization, provided that the organization utilizes services provided by registered mortgage loan originators or that it holds a valid letter of exemption issued by the Superintendent of Financial Institutions in accordance with the bill;<sup>16</sup>

--A depository institution not otherwise required to be licensed under the RMLA that voluntarily makes a filing on the NMLS&R as an exempt entity for the purpose of licensing loan originators exclusively associated with the institution and that holds a valid letter of exemption issued by the Superintendent in accordance with the bill.<sup>17</sup>

### **Registration of mortgage lenders and mortgage brokers**

The bill prohibits any person, on the person's own behalf or on behalf of any other person, from acting as a mortgage lender or mortgage broker without first obtaining a certificate of registration from the Superintendent of Financial Institutions. A certificate is required for the principal office and every branch office to be maintained by the person for the transaction of business as a mortgage lender or mortgage broker in Ohio. And to transact such business in Ohio, a registrant must maintain an office in Ohio.<sup>18</sup>

#### **Application for registration; investigation**

An application for registration as a mortgage lender or mortgage broker must be in a form prescribed by the Superintendent that complies with NMLS&R requirements. It must be accompanied by a nonrefundable application fee of \$500 for each location of an office to be maintained by the applicant and any additional fee required by the NMLS&R. Upon receipt of an application and the required fees, the Superintendent is to investigate the applicant and any individual whose identity is required to be disclosed in the application. The investigation must include a civil records check.<sup>19</sup>

In connection with applying for a certificate of registration, the applicant is also required to furnish to the NMLS&R information concerning the applicant's identity, including:

--The applicant's fingerprints for submission to the FBI, and any other governmental agency authorized to receive such information, for purposes of a state, national, and international criminal history background check;

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<sup>16</sup> See R.C. 1322.05.

<sup>17</sup> See R.C. 1322.05.

<sup>18</sup> R.C. 1322.07(A).

<sup>19</sup> R.C. 1322.09(A) and (B).





--Personal history and experience in a form prescribed by the NMLS&R, along with authorization for the Superintendent and the NMLS&R to obtain an independent credit report from a consumer reporting agency and information related to any administrative, civil, or criminal findings by any governmental jurisdiction.<sup>20</sup>

The Superintendent is authorized to establish relationships or enter into contracts with the NMLS&R, or any entities designated by it, to collect and maintain records and process transaction fees or other fees related to certificates of registration or the persons associated with a mortgage lender or mortgage broker. For purposes of the bill and to reduce the points of contact that the FBI may have to maintain, the Division of Financial Institutions may use the NMLS&R as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or other governmental agencies. To reduce the points of contact that the Division may have to maintain, the Division may use the NMLS&R as a channeling agent for requesting information from and distributing information to any source as determined by the Division.<sup>21</sup>

#### **Issuance of certificate of registration**

Upon the conclusion of the required investigation, the Superintendent must issue a certificate of registration to the applicant if the Superintendent finds that the following conditions are met:<sup>22</sup>

(1) The application is accompanied by the application fee and any fee required by the NMLS&R.

(2) If the application is for a location that is a residence, evidence that the use of the residence to transact business as a mortgage lender or mortgage broker is not prohibited.

(3) The applicant maintains all necessary filings and approvals required by the Secretary of State.

(4) The applicant complies with the bill's surety bond requirements (see below).

(5) The applicant has not made a material misstatement of fact or material omission of fact in the application.

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<sup>20</sup> R.C. 1322.09(C).

<sup>21</sup> R.C. 1322.09(G).

<sup>22</sup> R.C. 1322.10(A).



(6) Neither the applicant nor any person whose identity is required to be disclosed on the application has had a mortgage lender or mortgage broker certificate of registration or mortgage loan originator license, or any comparable authority, revoked in any governmental jurisdiction or has pleaded guilty or no contest to or been convicted of any of the following in a domestic, foreign, or military court:

- During the seven-year period immediately preceding the date of application, a misdemeanor involving theft or any felony;
- At any time prior to the date the application is approved, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.

The bill states that a pardon or expungement of a conviction is not to be considered a conviction for these purposes. When determining the eligibility of an applicant, the Superintendent may consider the underlying crime, facts, or circumstances connected with a pardoned or expunged conviction.<sup>23</sup>

(7) The applicant's operations manager successfully completed the examination required by the bill (see below).

(8) The applicant's financial responsibility, experience, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly, fairly, and efficiently in compliance with the purposes of the bill and the rules adopted under the bill. The Superintendent is prohibited from using a credit score or a bankruptcy as the sole basis for registration denial.

For purposes of determining whether an applicant that is a partnership, corporation, or other business entity or association has met the conditions set forth in (6) and (8), above, the Superintendent is to determine which partners, shareholders, or persons named in the application must meet those conditions. The determination is to be based on the extent and nature of the partner's, shareholder's, or person's ownership interest in the business entity that is the applicant and on whether the person is in a position to direct, control, or adversely influence the operations of the applicant.<sup>24</sup>

### **Renewal of certificate**

A certificate of registration may be renewed annually on or before December 31 if the Superintendent finds that the following conditions are met:

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<sup>23</sup> R.C. 1322.10(F).

<sup>24</sup> R.C. 1322.10(B).

(1) The renewal application is accompanied by a nonrefundable renewal fee of \$500 for each location of an office to be maintained by the applicant and any fee required by the NMLS&R.

(2) The operations manager designated by the applicant has completed at least eight hours of continuing education as required by the bill (see below).

(3) The applicant meets the conditions for the original issuance of a certificate.

(4) The applicant's certificate of registration is not subject to an order of suspension or an unpaid and past due fine imposed by the Superintendent.<sup>25</sup>

If a renewal fee or additional fee required by the NMLS&R is received by the Superintendent after December 31, the certificate of registration is not to be considered renewed and the applicant must cease activity as a mortgage lender or mortgage broker, unless the applicant – not later than 45 days after the renewal deadline – submits the renewal fee or additional fee and a \$100 penalty.<sup>26</sup>

#### **Designated operations manager**

The bill requires each registrant or entity holding a valid letter of exemption to designate an "employee"<sup>27</sup> or owner of that registrant's business as the operations manager. The operations manager is responsible for the management, supervision, and control of a particular location.

To be eligible for such a designation, an employee or owner must have at least three years of experience as a mortgage loan originator or registered mortgage loan originator. While acting as the operations manager, the employee or owner must be licensed as a mortgage loan originator under the bill and cannot be employed by any other mortgage lender or mortgage broker.<sup>28</sup>

#### **Restrictions applicable to certificates of registration**

Under the bill:

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<sup>25</sup> R.C. 1322.10(C).

<sup>26</sup> R.C. 1322.10(D) and (E).

<sup>27</sup> See R.C. 1322.01(O) for the definition of "employee."

<sup>28</sup> R.C. 1322.12.



--A certificate of registration and the authority granted under that certificate is not transferable or assignable and cannot be franchised by contract or any other means.<sup>29</sup>

--A person cannot acquire, sell, or transfer any interest in a registrant or an applicant for a certificate of registration in order to conceal the true ownership or control of the registrant or applicant.<sup>30</sup>

--A registrant that is a business entity or association must notify the Division of Financial Institutions of every sale or transfer of any stock, security, membership, partnership, or other equitable, beneficial, or ownership interest in the entity or association, if the interest represents at least a 5% membership, partnership, or other equitable, beneficial, or ownership interest in the entity or association. Every person that acquires or otherwise receives such an interest is subject to the RMLA. The Division may make any investigation necessary to determine whether any fact or condition exists that, if it had existed at the time of the original application for a certificate of registration, would have warranted the Division to deny the application. If such a fact or condition is found, the Division may revoke the registrant's certificate.<sup>31</sup>

#### **Sale of leads only**

If a person is registered under the RMLA solely to sell leads of potential buyers to residential mortgage lenders or mortgage brokers, or solely to match buyers with residential mortgage lenders or mortgage brokers through a computerized loan origination system recognized by the U.S. Department of Housing and Urban Development, the person is required to make only those disclosures under the RMLA that apply to the portion of the transaction during which they have direct buyer contact, and is subject to all fair conduct and prohibition requirements in their dealing with buyers.<sup>32</sup>

#### **Licensure of mortgage loan originators**

The bill prohibits any individual from acting as a mortgage loan originator without first having obtained a license from the Superintendent of Financial Institutions. A mortgage loan originator must be employed by or associated with a mortgage lender, mortgage broker, or entity holding a valid letter of exemption, but

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<sup>29</sup> R.C. 1322.09(F).

<sup>30</sup> R.C. 1322.15.

<sup>31</sup> R.C. 1322.16.

<sup>32</sup> R.C. 1322.17.

cannot be employed by or associated with more than one mortgage lender, mortgage broker, or entity holding a valid letter of exemption at any one time.

However, an individual acting under the individual's authority as a registered mortgage loan originator is not required to be licensed under the bill.<sup>33</sup>

### **License application; investigation**

An application for a license as a mortgage loan originator must be in a form prescribed by the Superintendent that complies with the requirements of the NMLS&R and be accompanied by a nonrefundable application fee of \$150 and any additional fee required by the NMLS&R. In addition, the application must provide all of the following:

(1) Evidence, acceptable to the Superintendent, that the applicant has successfully completed at least 24 hours of *pre-licensing instruction* consisting of 20 hours of instruction in an "approved education course"<sup>34</sup> and four hours of instruction in a course or program of study reviewed and approved by the Superintendent concerning Ohio lending laws and the Ohio Consumer Sales Practices Act, as it applies to registrants and licensees.

- If an applicant held a valid mortgage loan originator license issued by the Superintendent at any time during the immediately preceding five-year period, the applicant is not required to complete any additional pre-licensing instruction. For this purpose, any time during which the individual is a registered mortgage loan originator is not be taken into account.
- If a person successfully completed the pre-licensing education requirement reviewed and approved by the NMLS&R for any state within the previous five years, the person must be granted credit toward completion of the bill's pre-licensing education requirement.

(2) Evidence that the applicant passed the *pre-licensing examination* required by the bill (see below);

(3) Any further information that the Superintendent requires.<sup>35</sup>

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<sup>33</sup> R.C. 1322.07(B)(1) and (2).

<sup>34</sup> "Approved education course" means any course approved by the NMLS&R (R.C. 1322.01(D)).

<sup>35</sup> R.C. 1322.20(A) through (C).

Upon the filing of the application and payment of the required fees, the Superintendent is to investigate the applicant. As part of that investigation, the Superintendent must conduct a civil records check.<sup>36</sup>

In connection with applying for a loan originator license, the applicant must also furnish to the NMLS&R information concerning the applicant's identity, including all of the following:

--The applicant's fingerprints for submission to the FBI and any other governmental agency or entity authorized to receive such information, for purposes of a state, national, and international criminal history background check;

--Personal history and experience in a form prescribed by the NMLS&R, along with authorization for the Superintendent and the NMLS&R to obtain an independent credit report from a consumer reporting agency and information related to any administrative, civil, or criminal findings by any governmental jurisdiction.<sup>37</sup>

The Superintendent is authorized to establish relationships or enter into contracts with the NMLS&R, or any entities designated by it, to collect and maintain records and process transaction fees or other fees related to mortgage loan originator licenses or the persons associated with a licensee. For purposes of the bill and to reduce the points of contact that the FBI may have to maintain, the Division of Financial Institutions may use the NMLS&R as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or other governmental agencies. To reduce the points of contact that the Division may have to maintain, the Division may use the NMLS&R as a channeling agent for requesting information from and distributing information to any source as determined by the Division.<sup>38</sup>

### **Issuance of license**

Upon the conclusion of the required investigation, the Superintendent must issue a license to the applicant if the Superintendent finds that the following conditions are met:<sup>39</sup>

(1) The application is accompanied by the application fee and any fee required by the NMLS&R.

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<sup>36</sup> R.C. 1322.20(D).

<sup>37</sup> R.C. 1322.20(E).

<sup>38</sup> R.C. 1322.20(H).

<sup>39</sup> R.C. 1322.21(A).



(2) The applicant has not made a material misstatement of fact or material omission of fact in the application.

(3) The applicant has not been convicted of or pleaded guilty or no contest to any of the following in a domestic, foreign, or military court:

- During the seven-year period immediately preceding the date of application for the certificate of registration, a misdemeanor involving theft or any felony;
- At any time prior to the date the application is approved, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.

The bill states that a pardon or expungement of a conviction is not to be considered a conviction for these purposes. When determining the eligibility of an applicant, the superintendent may consider the underlying crime, facts, or circumstances connected with a pardoned or expunged conviction.<sup>40</sup>

(4) The applicant completed the required pre-licensing instruction.

(5) The applicant's financial responsibility, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the bill. The Superintendent is prohibited from using a credit score or bankruptcy as the sole basis for a license denial.

(6) The applicant is in compliance with the bill's surety bond requirements (see below).

(7) The applicant has not had a mortgage loan originator license, or any comparable authority, revoked in any governmental jurisdiction.

#### **License renewal**

A license may be renewed annually on or before December 31 if the Superintendent finds that:

(1) The renewal application is accompanied by a nonrefundable renewal fee of \$150 and any fee required by the NMLS&R.

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<sup>40</sup> R.C. 1322.21(E).

(2) The applicant has completed at least eight hours of continuing education as required by the bill (see below).

(3) The applicant meets the conditions for the original issuance of a license.

(4) The applicant's license is not subject to an order of suspension or an unpaid and past due fine imposed by the Superintendent.<sup>41</sup>

If a renewal fee or additional fee required by the NMLS&R is received by the Superintendent after December 31, the license is not to be considered renewed and the applicant must cease activity as a mortgage originator, unless the applicant – not later than 45 days after the renewal deadline – submits the renewal fee and any other required fee and a \$100 penalty.<sup>42</sup>

### **Temporary license**

Similar to current law, the Superintendent is authorized to issue to an out-of-state mortgage loan originator a temporary mortgage loan originator license that enables the licensee to engage in the business of a mortgage loan originator while the individual completes the requirements necessary for a mortgage loan originator license. To qualify, the individual must hold a valid mortgage loan originator license, or comparable authority, issued by another state and be registered, fingerprinted, and maintain a unique identifier through the NMLS&R. A temporary license is valid for a period of not more than 120 days from the date of issuance and cannot be renewed.<sup>43</sup>

An application for a temporary license must be accompanied by a certification that, as of the date of application, the applicant:

(1) Has at least two years of experience in the field of residential mortgage lending in the five years immediately preceding the date of application for the temporary license;

(2) Has not previously applied for a temporary mortgage loan originator license in Ohio;

(3) Has not had a mortgage loan originator license, or comparable authority, revoked in any governmental jurisdiction;

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<sup>41</sup> R.C. 1322.21(B).

<sup>42</sup> R.C. 1322.21(C) and (D).

<sup>43</sup> R.C. 1322.24(A)(1) and (B). See also R.C. 1322.07(B)(3).





(4) Has not been convicted of, or pleaded guilty or no contest to, any of the following in a domestic, foreign, or military court:

- During the seven-year period immediately preceding the date of application, a misdemeanor involving theft or any felony;
- At any time prior to the date of application, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.

For this purpose, any conviction for which the applicant has received a pardon is not to be considered a conviction.<sup>44</sup>

The Superintendent is required to issue a temporary license to the applicant if, among other things, the applicant has a sponsor that certifies employment of, or association with, the applicant and has signed the application. The sponsor must be a registrant that employs or is associated with an applicant and, during the term of the applicant's temporary license, covers the applicant under its corporate surety bond or requires the applicant to obtain and maintain a corporate surety bond. A sponsor has an affirmative duty to supervise the conduct of the temporary licensee in the same manner as is required of its other licensees.<sup>45</sup>

Lastly, the bill provides that, if the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) is modified to permit states to issue a temporary mortgage loan originator license to a registered mortgage loan originator, the Superintendent must adopt rules the Superintendent considers necessary and appropriate to issue a temporary license to a registered mortgage loan originator.<sup>46</sup>

### **Pre-licensing examination**

The bill requires each applicant for a mortgage loan originator license to submit to a written test developed and approved by the NMLS&R and administered by an "approved test provider."<sup>47</sup> The test must adequately measure the applicant's knowledge and comprehension in appropriate subject areas, including ethics, federal and state law related to mortgage origination, fraud, consumer protection, and the nontraditional mortgage marketplace, and fair lending issues. To pass the test, the individual must answer at least 75% of the questions correctly.

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<sup>44</sup> R.C. 1322.24(C).

<sup>45</sup> R.C. 1322.24(A)(2), (D), and (E).

<sup>46</sup> R.C. 1322.25.

<sup>47</sup> An "approved test provider" is one that has been approved by the NMLS&R (R.C. 1322.01(E)).



An individual may retake the test three consecutive times provided the period between taking the tests is at least 30 days. If an individual fails three consecutive tests, the individual must wait at least six months before taking the test again.

If a mortgage loan originator fails to maintain a valid mortgage loan originator license for a period of five years or longer, the individual is required to retake the test. For this purpose, any time during which the individual is a registered mortgage loan originator is not to be taken into account.<sup>48</sup>

### **Continuing education**

Each licensee must complete at least eight hours of continuing education every calendar year. To qualify, the continuing education must be offered in a course or program of study reviewed and approved by the Superintendent and must include:

--Three hours of applicable federal law and regulations;

--Two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues;

--Two hours of training related to lending standards for nonqualified mortgages or the "nontraditional mortgage product"<sup>49</sup> marketplace.

The continuing education courses also must be reviewed and approved by the NMLS&R based upon reasonable standards.<sup>50</sup>

The bill provides that an individual cannot take the same approved course in the same or successive years to meet the annual requirement for continuing education. Additionally, an individual can only receive credit for a continuing education course in the year in which the course is taken, unless the individual is making up a deficiency in continuing education as permitted by rule or order of the Superintendent.

A licensee who subsequently becomes unlicensed is required to complete the continuing education requirement for the last year in which the license was held prior to the issuance of a new or renewed license. If a licensee is approved as an instructor of a continuing education course, the licensee is to receive credit for the licensee's own annual continuing education requirement at the rate of two credit hours for every one hour taught.

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<sup>48</sup> R.C. 1322.27.

<sup>49</sup> A "nontraditional mortgage product" is one that is not a 30-year fixed rate mortgage (R.C. 1322.01(GG)).

<sup>50</sup> R.C. 1322.28(A) and (B).



Further, if an individual successfully completed a continuing education course reviewed and approved by the NMLS&R as required by another state, the individual can receive credit toward completion of the bill's continuing education requirement.<sup>51</sup>

### **Employment of a licensee; termination**

A licensee may seek to be employed by or associated with a mortgage lender or mortgage broker, or a person or entity that is exempt from the RMLA, if the mortgage lender, mortgage broker, or person or entity receives written confirmation from the Superintendent that the mortgage loan originator is licensed under the RMLA.<sup>52</sup>

A registrant or entity holding a valid letter of exemption must supervise all business of a mortgage loan originator conducted at any office used by the mortgage loan originator. If a mortgage loan originator's employment or association is terminated for any reason, the licensee may request the transfer of the license to another mortgage lender or mortgage broker by submitting a transfer application, along with a \$15 fee and any fee required by the NMLS&R, to the Superintendent or may request the Superintendent in writing to hold the license in escrow. Any licensee whose license is held in escrow must (1) cease activity as a mortgage loan originator and (2) be required to apply for renewal annually and to comply with the annual continuing education requirement. A mortgage lender or mortgage broker may employ or be associated with a mortgage loan originator on a temporary basis pending the transfer of the mortgage loan originator's license to the mortgage lender or mortgage broker, if the mortgage lender or mortgage broker receives written confirmation from the Superintendent that the mortgage loan originator is licensed under the RMLA.<sup>53</sup>

However, if a licensee is employed by or associated with a person or entity that is exempt from the RMLA, the licensee must maintain and display a copy of the mortgage loan originator license at the office where the licensee principally transacts business. If the mortgage loan originator's employment or association is terminated, the mortgage loan originator is to notify the Superintendent within five business days after termination. The licensee may request the transfer of the license to another person or entity exempt from the RMLA by submitting a transfer application, along with a \$15 fee and any fee required by the NMLS&R, to the Superintendent. Alternatively, the licensee may request the Superintendent in writing to hold the license in escrow. A licensee whose license is held in escrow must (1) cease activity as a mortgage loan originator

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<sup>51</sup> R.C. 1322.28(C).

<sup>52</sup> R.C. 1322.29(E).

<sup>53</sup> R.C. 1322.29(A) through (C).



and (2) be required to apply for renewal annually and to comply with the annual continuing education requirement.<sup>54</sup>

### **Interest rate**

A registrant is permitted to contract for and receive interest at any rate or rates agreed upon by the parties to a dwelling-secured loan or mortgage, but the interest cannot exceed an annual percentage rate of 25%.<sup>55</sup>

### **Surety bond requirement**

To conduct business in Ohio, a registrant must obtain and maintain in effect at all times a corporate surety bond in the penal sum of 0.5% of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding \$150,000. The bond cannot be less than \$50,000 plus an additional penal sum of \$10,000 for each location, in excess of one, at which the registrant conducts business. The bond is to be in favor of the Superintendent of Financial Institutions and for the exclusive benefit of any buyer injured by a violation of the RMLA by the registrant, an employee of the registrant, or a mortgage loan originator employed by or associated with the registrant.<sup>56</sup>

A licensee who is employed by or associated with a person or entity that is exempt from the RMLA cannot conduct business in Ohio, unless either the licensee or the person or entity on the licensee's behalf has obtained and maintains in effect at all times a corporate surety bond in favor of the Superintendent. The bond must be in the penal sum of 0.5% of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding \$100,000. The bond cannot be less than \$50,000. The bond is to be for the exclusive benefit of any buyer injured by a violation of the RMLA by the licensee.<sup>57</sup>

If a licensee is covered by a corporate surety bond obtained by a registrant, or by a person or entity that is exempt from the RMLA, the licensee is employed by or associated with, the licensee is not required to obtain an individual bond.<sup>58</sup>

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<sup>54</sup> R.C. 1322.29(D).

<sup>55</sup> R.C. 1322.30.

<sup>56</sup> R.C. 1322.32(A)(1) and (B) through (F).

<sup>57</sup> R.C. 1322.32(A)(2)(a) and (B) through (F).

<sup>58</sup> R.C. 1322.32(A)(2)(b).



## **Examination of records; call reports; electronic records**

As often as the Superintendent of Financial Institutions considers it necessary, the Superintendent may examine the registrant's or licensee's records, including all records created or processed by a licensee, pertaining to business transacted under the RMLA. These records must be retained for four years. This requirement also applies to any person whose certificate of registration or license is cancelled, surrendered, or revoked or who otherwise ceases to engage in business as a mortgage lender, mortgage broker, or mortgage loan originator.

Additionally, registrants, licensees, and entities holding a valid letter of exemption are required to submit call reports or other reports of condition to the NMLS&R. Registrants and entities holding a valid letter of exemption must ensure that all residential mortgage loans consummated as a result of a mortgage loan originator's loan origination activities are included in those reports of condition.

The bill states that any document or record required to be signed and filed in Ohio as an electronic record through the NMLS&R, and any other electronic record filed through the NMLS&R, is to be considered a valid original document upon reproduction to paper form by the Division of Financial Institutions.<sup>59</sup>

## **Obstructing examination or investigation**

The bill retains the current law prohibition against obstructing an examination or investigation conducted by the Superintendent of Financial Institutions, tampering with any evidence, and withholding or destroying records.<sup>60</sup>

## **Confidential information**

The bill retains current law with respect to:

- What information is confidential;
- What information is a public record;
- When information relating to registrants and licensees may be disclosed;
- The reporting of violations and enforcement actions to the NMLS&R.<sup>61</sup>

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<sup>59</sup> R.C. 1322.34.

<sup>60</sup> R.C. 1322.35.

<sup>61</sup> R.C. 1322.36.



## Prohibited acts

Relative to prohibited activities, the bill does the following:

--Retains the provisions of current law that prohibit registrants and licensees, persons required to be registered or licensed under the RMLA, and individuals required to be disclosed in an application, from engaging in specified fraudulent conduct, including any unfair or deceptive act or practice prohibited under the Consumers Sales Practices Act.<sup>62</sup>

--Retains existing law that generally prohibits any registrant, or any member of the immediate family of an owner of a registrant, from owning or controlling a majority interest in an appraisal company.<sup>63</sup>

--Revises the current prohibition regarding referrals to settlement service providers. Under the bill, registrants, licensees, and persons required to be registered or licensed under the RMLA, or entities with a valid letter of exemption, are prohibited from referring a buyer to a settlement service provider, including any title insurance company, *that has an affiliated business arrangement with the registrant, licensee, or person* without providing the buyer with disclosures as required by the Superintendent.<sup>64</sup>

--Retains existing law that prohibits any registrant or licensee from referring a buyer to an appraisal company, if the registrant or licensee, a member of the immediate family of an owner of the registrant, or a member of the licensee's immediate family, has a certain financial relationship with the appraisal company.<sup>65</sup>

--Prohibits registrants and entities with valid letter of exemption from failing to (1) reasonably supervise a mortgage loan originator or any other person associated with a registrant or (2) establish reasonable procedures designed to avoid violations of the RMLA and applicable state or federal lending laws by mortgage loan originators or such other persons.<sup>66</sup>

## Fiduciary duties; buyers action for damages

The bill retains the fiduciary duties that are imposed under current law on registered mortgage brokers, licensees, and any person required to be registered as a

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<sup>62</sup> R.C. 1322.40.

<sup>63</sup> R.C. 1322.41.

<sup>64</sup> R.C. 1322.42(A) and (D). "Affiliated business arrangement" has the same meaning as in 12 U.S.C. 2602.

<sup>65</sup> R.C. 1322.42(B).

<sup>66</sup> R.C. 1322.43.



mortgage broker or licensed as a mortgage loan originator. A buyer injured by a failure to comply with those fiduciary duties may bring an action for recovery of damages. The damages awarded must at least equal all compensation paid directly or indirectly to a mortgage broker from any source, plus reasonable attorney's fees and court costs. The buyer may be awarded punitive damages. The bill, however, expressly states that a registrant or licensee is not required to maintain a separate account for the deposit of buyer funds.<sup>67</sup>

### **Advertising requirements**

Under the bill, a mortgage lender, mortgage broker, or mortgage loan originator must disclose in any printed, televised, broadcast, electronically transmitted, or published advertisement relating to the mortgage lender's, mortgage broker's, or mortgage loan originator's services, including on any electronic site accessible through the Internet, both of the following: (1) the business name of the mortgage lender, mortgage broker, or mortgage loan originator and (2) the unique identifier of the mortgage lender, mortgage broker, or mortgage loan originator. In making any advertisement, a registrant must also comply with 12 C.F.R. 226.16.<sup>68</sup>

### **Disciplinary actions**

The bill authorizes the Superintendent of Financial Institutions, after notice and an opportunity for a hearing, to suspend, revoke, or refuse to issue or renew a mortgage lender or mortgage broker certificate of registration or a mortgage loan originator license, if the Superintendent finds any of the following:

--A violation of or failure to comply with the RMLA or the rules adopted under it, federal lending law, or any other law applicable to the business conducted under a certificate of registration or license;

--A conviction of or guilty or no contest plea to a felony in a domestic, foreign, or military court;

--A conviction of or guilty or no contest plea to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court;

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<sup>67</sup> R.C. 1322.45.

<sup>68</sup> R.C. 1322.46.



--The revocation of a mortgage lender or mortgage broker certificate of registration or mortgage loan originator license, or any comparable authority, in any governmental jurisdiction.<sup>69</sup>

The Superintendent also may impose a fine of not more than \$1,000 for each day a violation of a law or rule is committed, repeated, or continued. If the registrant or licensee engages in a pattern of repeated violations of a law or rule, the Superintendent may impose a fine of not more than \$2,000 for each day the violation is committed, repeated, or continued. In determining the amount of a fine to be imposed, the Superintendent may consider the seriousness of the violation, the registrant's or licensee's good faith efforts to prevent the violation, the registrant's or licensee's history regarding violations and compliance with orders issued by Division of Financial Institutions, the registrant's or licensee's financial resources, and any other matters the Superintendent considers appropriate in enforcing the RMLA.<sup>70</sup>

The bill authorizes the Superintendent to investigate alleged violations of the RMLA or complaints concerning any violation. The Superintendent may make application to the court of common pleas for an order enjoining any violation and, if necessary, for an order enjoining any person from acting as a mortgage lender, mortgage broker, registrant, mortgage loan originator, or licensee in violation of the RMLA. The Superintendent may seek and obtain civil penalties for unregistered or unlicensed conduct of not more than \$5,000 per violation.<sup>71</sup>

Additionally, if the Superintendent determines that a person is engaged in or is believed to be engaged in activities that may constitute a violation of the RMLA, the Superintendent, after notice and a hearing conducted in accordance with the Administrative Procedure Act, may issue a cease and desist order. If the administrative action is to enjoin a person from acting as a mortgage lender, mortgage broker, or mortgage loan originator in violation of the RMLA, the Superintendent may seek and impose fines for that conduct in an amount not to exceed \$5,000 per violation. Such an order is enforceable in the court of common pleas.<sup>72</sup>

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<sup>69</sup> R.C. 1322.50(A)(1).

<sup>70</sup> R.C. 1322.50(A)(2).

<sup>71</sup> R.C. 1322.50(B) and (C).

<sup>72</sup> R.C. 1322.50(D).





If the Superintendent revokes a mortgage lender or mortgage broker certificate of registration or mortgage loan originator license, the revocation is permanent and with prejudice.<sup>73</sup>

To protect the public interest, the Superintendent may, under certain circumstances and without a prior hearing, suspend a mortgage lender or mortgage broker certificate of registration or mortgage loan originator license. The Superintendent may, in accordance with the Administrative Procedure Act, subsequently revoke any registration or license that was suspended.<sup>74</sup>

### **Buyer's action for damages; criminal proceedings**

A buyer injured by a violation of the bill's registration or licensing requirement or its prohibitions regarding fraudulent conduct or advertising (see above) may bring an action for recovery of damages. The damages awarded must be at least equal to all compensation paid directly and indirectly to a mortgage lender, mortgage broker, or mortgage loan originator from any source, plus reasonable attorney's fees and court costs. In addition, the buyer may be awarded punitive damages. A buyer injured by such a violation is precluded from recovering any damages, plus reasonable attorney's fees and costs, if the buyer has also recovered any damages in a cause of action brought for a mortgage broker's or licensee's failure to comply with the fiduciary duties established under the RMLA (see above) and the recovery of damages for this violation is based on the same acts or circumstances as the basis for recovery of damages for that failure to comply.<sup>75</sup>

The Superintendent of Financial Institutions or a buyer may directly bring an action to enjoin a violation of the RMLA. In addition, the Attorney General may directly bring such an action with the same rights, privileges, and powers as those provided under the Consumer Sales Practices Act. The prosecuting attorney of the county in which the action may be brought may bring an action to enjoin such a violation only if the prosecuting attorney first presents evidence of the violation to the Attorney General and, within a reasonable period of time, the Attorney General has not agreed to bring the action.<sup>76</sup>

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<sup>73</sup> R.C. 1322.50(E).

<sup>74</sup> R.C. 1322.50(F).

<sup>75</sup> R.C. 1322.52(A) and (G).

<sup>76</sup> R.C. 1322.52(B)(1).



Lastly, the bill retains current law relative to the initiation of criminal proceedings under the RMLA.<sup>77</sup>

### **Superintendent's rule-making authority**

The bill permits the Superintendent of Financial Institutions to adopt reasonable rules to administer and enforce the RMLA.<sup>78</sup> If the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) is modified, and the item modified affects any matter within the scope of the RMLA, the Superintendent is authorized to adopt a similar provision by rule.<sup>79</sup> Likewise, the bill permits the Superintendent to adopt rules amending the definition of "mortgage loan originator," "mortgage broker," or "mortgage lender" for purposes of the RMLA, or the criteria for an entity to obtain a letter of exemption, if the Superintendent finds that the change is necessary to remain consistent with the purposes intended by the policy and provision of the SAFE Act.<sup>80</sup> The Superintendent may also adopt any rule necessary to comply with the requirements of the NMLS&R, including with respect to (1) payment of nonrefundable fees to apply for, maintain, and renew licenses through the NMLS&R, (2) renewal or reporting dates, (3) procedures to amend or to surrender a license, and (4) any other activity necessary for participation in the NMLS&R.<sup>81</sup>

### **Criminal penalties**

The bill specifies criminal penalties for certain violations of the RMLA.<sup>82</sup>

**Table: RMLA organization and section renumbering**

<b>OHIO RESIDENTIAL MORTGAGE LENDING ACT</b>		
<b>NEW SECTION</b>	<b>(CURRENT LAW)</b>	<b>DESCRIPTION</b>
1322.01	(1322.01)	Definitions
1322.02	(1322.024)	Rules amending definitions

<sup>77</sup> R.C. 1322.52(B)(2) through (5).

<sup>78</sup> R.C. 1322.57.

<sup>79</sup> R.C. 1322.55.

<sup>80</sup> R.C. 1322.02.

<sup>81</sup> R.C. 1322.56.

<sup>82</sup> R.C. 1322.99.



OHIO RESIDENTIAL MORTGAGE LENDING ACT		
NEW SECTION	(CURRENT LAW)	DESCRIPTION
1322.04		Exemptions
1322.05	(1322.023)	Letter of exemption for credit union service organizations and depository institutions
1322.07	(1322.02)	Registration required for mortgage lenders and mortgage brokers; license required for mortgage loan originators
1322.09	(1322.03)	Application for <b>mortgage lender/mortgage broker</b> certificate of registration
1322.10	(1322.04)	Issuance of registration/renewal
1322.12		Designated operations manager
1322.15	(1322.073)	Concealment of ownership or control
1322.16	(1322.021)	Notification of transfer of ownership
1322.17	(1322.065)	Mortgage broker: sell leads only
1322.20	(1322.031)	Application for <b>mortgage loan originator</b> license
1322.21	(1322.041)	Issuance of license/renewal
1322.24	(1322.042)	Temporary mortgage loan originator license
1322.25	(1322.043)	Rules regarding temporary license
1322.27	(1322.051)	Pre-licensing examination
1322.28	(1322.052)	Continuing education
1322.29		Mortgage loan originator: employment/termination



<b>OHIO RESIDENTIAL MORTGAGE LENDING ACT</b>		
<b>NEW SECTION</b>	<b>(CURRENT LAW)</b>	<b>DESCRIPTION</b>
1322.30		Interest rate
1322.32	(1322.05)	Surety bond
1322.34	(1322.06)	Examination of records
1322.35	(1322.072)	Obstructing examination or investigation
1322.36	(1322.061)	Confidential information
1322.40	(1322.07)	Prohibited acts
1322.41	(1322.074)	Prohibited interest in appraisal company
1322.42	(1322.075)	Prohibited referrals; disclosure
1322.43		Prohibited actions: failure to supervise
1322.45	(1322.081)	Fiduciary duties for mortgage brokers and loan originators; buyers action for damages
1322.46	(1322.09)	Advertising requirements
1322.50	(1322.10)	Disciplinary actions
1322.51	(1322.101)	Effect of child support default
1322.52	(1322.11)	Buyers action for damages; criminal proceedings
1322.55	(1322.025)	SAFE Act changes: Superintendent may adopt similar rule
1322.56		NMLS&R: Superintendent may adopt rules to comply
1322.57	(1322.12)	General rule-making authority
1322.99		Penalties



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## HISTORY

ACTION	DATE
Introduced	05-02-17
Reported, H. Financial Institutions, Housing, & Urban Development	06-20-17
Passed House (77-18)	06-21-17

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