

SENATE BILL 307

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3lr2401
CF HB 282

By: **Senator Klausmeier**

Introduced and read first time: January 27, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Financial Institutions – Mortgage Loan Originators – Independent Contractors**

3 FOR the purpose of altering certain provisions of law relating to the licensing of mortgage
4 loan originators to provide for the licensing of certain independent contractors as
5 mortgage loan originators under certain circumstances; requiring licensed mortgage
6 lenders to supervise certain activities of certain mortgage loan originators in a
7 certain manner; and generally relating to the financial institutions and the licensing
8 of mortgage loan originators.

9 BY repealing and reenacting, without amendments,
10 Article – Financial Institutions
11 Section 11–501(a), 11–601(a), 11–603.1(a) and (b), 11–606(a), and 11–612(a)
12 Annotated Code of Maryland
13 (2020 Replacement Volume and 2022 Supplement)

14 BY adding to
15 Article – Financial Institutions
16 Section 11–501(q), 11–511.2, and 11–601(x)
17 Annotated Code of Maryland
18 (2020 Replacement Volume and 2022 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Financial Institutions
21 Section 11–501(q), 11–601(h) and (x), 11–602(a), 11–603, 11–603.1(l) and (m),
22 11–606(e), 11–606.1(a) and (g), 11–612(g), and 11–618 through 11–621
23 Annotated Code of Maryland
24 (2020 Replacement Volume and 2022 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Financial Institutions

11–501.

(a) In this subtitle the following words have the meanings indicated.

(Q) “SPONSOR” HAS THE MEANING STATED IN § 11–601 OF THIS TITLE.

[(q)] (R) “State” means the State of Maryland.

11–511.2.

(A) A LICENSEE WHO IS THE SPONSOR OF A MORTGAGE LOAN ORIGINATOR SHALL AT ALL TIMES REASONABLY AND ADEQUATELY SUPERVISE THE ACTIVITIES OF THE MORTGAGE LOAN ORIGINATOR THAT ARE CONDUCTED WITHIN THE SCOPE OF THE MORTGAGE LOAN ORIGINATOR’S EMPLOYMENT OR EXCLUSIVE ENGAGEMENT.

(B) THE COMMISSIONER SHALL ADOPT REGULATIONS NECESSARY TO CARRY OUT THIS SECTION.

11–601.

(a) In this subtitle the following words have the meanings indicated.

(h) “Independent contractor” means **[a person]** **AN INDIVIDUAL** whose compensation is paid without a deduction for federal or State income tax.

(X) “SPONSOR” MEANS A MORTGAGE LENDER, OR A PERSON EXEMPT FROM LICENSING TO ACT AS A MORTGAGE LENDER, WHO EMPLOYS OR EXCLUSIVELY ENGAGES AN INDIVIDUAL TO ACT AS A MORTGAGE LOAN ORIGINATOR IN THE STATE.

[(x)] (Y) “Unique identifier” means a number or other identifier assigned by NMLS.

11–602.

(a) (1) The licensing provisions of this subtitle **[do not]** apply to independent contractors.

(2) **[Independent contractors are subject to the licensing provisions of Subtitle 5 of this title unless exempt from licensing under that subtitle]** **AN INDEPENDENT CONTRACTOR MAY BE ISSUED A LICENSE AND ACT AS A MORTGAGE LOAN ORIGINATOR IF THE INDEPENDENT CONTRACTOR IS NOT ENGAGED BY MORE THAN ONE SPONSOR IN THE STATE.**

1 11-603.

2 (a) A license issued under this subtitle authorizes the licensee to act as a
3 mortgage loan originator only when acting within the scope of employment **OR EXCLUSIVE**
4 **ENGAGEMENT** with:

5 (1) A mortgage lender; or

6 (2) A person who is exempt from licensing as a mortgage lender.

7 (b) A licensee may not:

8 (1) Maintain more than one license under this subtitle; or

9 (2) Be employed **OR ENGAGED** by more than one mortgage lender or
10 person who is exempt from licensing as a mortgage lender.

11 (c) (1) (i) Each license provided for through NMLS shall include the
12 following information:

13 1. The name of the licensee;

14 2. The name of the licensee's [employer] **SPONSOR**; and

15 3. The unique identifier of the licensee.

16 (ii) The unique identifier of the licensee shall constitute the license
17 number for the license.

18 (2) An individual may not act as a mortgage loan originator under a name
19 or for [an employer] **A SPONSOR** that is different from the name and [employer] **SPONSOR**
20 that appear on the license unless the licensee:

21 (i) Notifies the Commissioner, in the form and in accordance with
22 the process that the Commissioner requires, in advance of a change in the licensee's name
23 or the licensee's [employer] **SPONSOR**;

24 (ii) Pays to the Commissioner a license amendment fee set by the
25 Commissioner for each notice provided under this paragraph; and

26 (iii) In the case of a new [employer] **SPONSOR**, amends the
27 sponsorship information on NMLS by submitting the amendment, in the form required by
28 the Commissioner, to indicate that the licensee is an employee **OR INDEPENDENT**
29 **CONTRACTOR** of the new [employer] **SPONSOR**.

(3) If a licensee ceases to be employed **OR EXCLUSIVELY ENGAGED** by a licensed mortgage lender or by a person exempt from licensing as a mortgage lender, the licensee shall notify the Commissioner within 10 business days, and the license shall be placed into nonactive status through NMLS.

(4) During the time that a license is in nonactive status, it is a violation of this subtitle for the licensee to engage in any activity for which a license is required under this subtitle.

(5) The license shall remain in nonactive status until the licensee:

(i) Notifies the Commissioner, in the form and in accordance with the process that the Commissioner requires, that the licensee has obtained employment **OR HAS BEEN EXCLUSIVELY ENGAGED** with a licensed mortgage lender or with a person exempt from licensing as a mortgage lender; and

(ii) Has complied with the requirements set forth in paragraph (2) of this subsection.

(d) A license may be issued under this subtitle to an individual who is not employed **OR EXCLUSIVELY ENGAGED** by a licensed mortgage lender or a person exempt from licensing as a mortgage lender provided the license is placed into and remains in nonactive status until the licensee:

(1) Notifies the Commissioner, in the form and in accordance with the process that the Commissioner requires, that the licensee has obtained employment **OR EXCLUSIVE ENGAGEMENT** with a licensed mortgage lender or with a person exempt from licensing as a mortgage lender; and

(2) Has complied with the requirements set forth in subsection (c)(2) of this section.

(e) A license may be issued under this subtitle to an individual who is employed **OR EXCLUSIVELY ENGAGED** by a mortgage lender, or a person exempt from licensing as a mortgage lender, that has its principal office located outside the State if the mortgage lender or the person exempt from licensing as a mortgage lender maintains a resident agent within the State.

(f) This section does not apply to an affiliated insurance producer–mortgage loan originator licensed under § 11–603.1 of this subtitle.

11–603.1.

(a) In this section, “affiliated insurance producer–mortgage loan originator” means an individual who:

(1) Originates mortgage loans only on behalf of a single financial institution that is:

(i) Described in § 11–502(b)(1) of this title; and

(ii) Approved by the Commissioner under subsection (b) of this section;

(2) Is a licensed insurance producer in good standing under § 10–103 of the Insurance Article; and

(3) Holds an appointment as an insurance producer for an insurer that controls, is controlled by, or is under common control with:

(i) The financial institution described in item (1) of this subsection; or

(ii) A mortgage lender licensee that:

1. Is approved by the Commissioner under subsection (c) of this section; and

2. Originates loans only on behalf of the financial institution described in item (1) of this subsection under an exclusive contract with the financial institution.

(b) The Commissioner shall approve a financial institution described in subsection (a)(1) of this section based on the following criteria:

(1) The financial institution is in good standing with its primary state or federal regulator; and

(2) The financial institution is in material compliance with applicable state and federal law.

(l) (1) An individual may not act as an affiliated insurance producer–mortgage loan originator under a name or for [an employer] **A SPONSOR** that is different from the name and [employer] **SPONSOR** that appear on the license unless the licensee:

(i) Notifies the Commissioner, in the form and in accordance with the process that the Commissioner requires, in advance of a change in the licensee’s name or the licensee’s [employer] **SPONSOR**;

(ii) Pays to the Commissioner a license amendment fee set by the Commissioner for each notice provided under item (i) of this paragraph; and

(iii) In the case of a new [employer] **SPONSOR**, amends the sponsorship information on NMLS by submitting the amendment in the form required by the Commissioner to indicate that the licensee is an employee **OR INDEPENDENT CONTRACTOR** of the new [employer] **SPONSOR**.

(2) If a licensee ceases to be employed **OR EXCLUSIVELY ENGAGED** by a financial institution approved by the Commissioner under subsection (b) of this section, the licensee shall notify the Commissioner within 10 business days, and the license shall be placed into nonactive status through NMLS.

(3) During the time that a license is in nonactive status, it is a violation of this subtitle for the licensee to engage in any activity for which a license is required under this subtitle.

(4) The license shall remain in nonactive status until the licensee:

(i) Notifies the Commissioner, in the form and in accordance with the process that the Commissioner requires, that the licensee has obtained employment **OR HAS BEEN EXCLUSIVELY ENGAGED** with a financial institution that is approved by the Commissioner under subsection (b) of this section; and

(ii) Has complied with the requirements set forth in paragraph (1) of this subsection.

(m) The Commissioner may issue a license under this subtitle to an individual who is not employed **OR EXCLUSIVELY ENGAGED** by a financial institution approved by the Commissioner under subsection (b) of this section, provided that the license is placed into and remains in nonactive status until the licensee:

(1) Notifies the Commissioner, in the form and in accordance with the process that the Commissioner requires, that the licensee has obtained employment **OR EXCLUSIVE ENGAGEMENT** with a financial institution approved by the Commissioner under subsection (b) of this section; and

(2) Has complied with the requirements set forth in subsection (l)(1) of this section.

11–606.

(a) To qualify for an initial license, an applicant shall complete at least 20 hours of prelicensing education that shall include:

(1) 3 hours of instruction on federal law and regulations relating to mortgage origination;

(2) 3 hours of instruction on ethics, including instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training related to lending standards and loan terms for nontraditional mortgage products.

(e) This section does not preclude any prelicensing education course, as approved by [the Nationwide Mortgage Licensing System and Registry] **NMLS**, that is provided by the [employer] **SPONSOR** of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the [employer] **SPONSOR** or **AFFILIATED** entity.

11-606.1.

(a) To qualify for an initial license, an applicant shall pass a qualified written test developed by [the Nationwide Mortgage Licensing System and Registry] **NMLS** and administered by a test provider approved by [the Nationwide Mortgage Licensing System and Registry] **NMLS**.

(g) This section does not prohibit a test provider approved by [the Nationwide Mortgage Licensing System and Registry] **NMLS** from providing a test at the location of the [employer] **SPONSOR** of the applicant or any subsidiary or affiliate of the [employer] **SPONSOR** of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

11-612.

(a) Before applying for renewal of a license, a licensee shall complete at least 8 hours of continuing education, which shall include:

(1) 3 hours of instruction on federal law and regulations relating to mortgage origination;

(2) 2 hours of instruction on ethics, including instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(g) This section does not preclude any continuing education course, as approved by [the Nationwide Mortgage Licensing System and Registry] **NMLS**, that is provided by the [employer] **SPONSOR** of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the [employer] **SPONSOR** or **AFFILIATED** entity.

11-618.

The employment **OR EXCLUSIVE ENGAGEMENT** of a mortgage loan originator licensed under this subtitle by a mortgage lender does not relieve the mortgage lender of a responsibility under this subtitle or under Subtitle 5 of this title, a rule or regulation adopted under this subtitle or under Subtitle 5 of this title, or a law governing mortgage lending in the State.

11-619.

(a) Each mortgage loan originator shall be covered by a surety bond in accordance with this section.

(b) (1) A mortgage loan originator who is an employee **OR INDEPENDENT CONTRACTOR** of a person subject to licensure under Subtitle 5 of this title may use the surety bond of that person to meet the mortgage loan originator's surety bond requirement.

(2) A mortgage loan originator who is an employee **OR INDEPENDENT CONTRACTOR** of a person exempt from licensure under Subtitle 5 of this title may use a surety bond of the person to meet the mortgage loan originator's surety bond requirement, provided the surety bond meets the requirements, based on mortgage loan volume, under § 11-508 of this title.

(c) A licensee who is an affiliated insurance producer-mortgage loan originator shall be deemed in compliance with this section if the licensee:

(1) Holds a surety bond that would satisfy the surety bond requirements under § 11-508 of this title if the affiliated insurance producer-mortgage loan originator were a licensee under Subtitle 5 of this title; or

(2) Is covered under a blanket surety bond held by the financial institution or mortgage lender licensee identified in § 11-603.1(a)(3) of this subtitle if the blanket surety bond:

(i) Covers all affiliated insurance producer-mortgage loan originators; and

(ii) Is in the amount of \$1,000,000 or another amount as required by the Commissioner by regulation.

11-620.

(a) (1) Except as otherwise provided in 12 U.S.C. § 5111, the requirements under any federal law and Title 4, Subtitles 1 through 5 of the General Provisions Article regarding the privacy or confidentiality of information or material provided to [the Nationwide Mortgage Licensing System and Registry] **NMLS**, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to

1 that information or material, shall continue to apply to that information or material after
2 the information or material has been disclosed to [the Nationwide Mortgage Licensing
3 System and Registry] **NMLS**.

4 (2) The information and material may be shared with all state and federal
5 regulatory officials having mortgage industry oversight authority without the loss of
6 privilege or the loss of confidentiality protections provided by federal law or Title 4,
7 Subtitles 1 through 5 of the General Provisions Article.

8 (b) The Commissioner may enter into information sharing agreements with other
9 governmental agencies, the Conference of State Bank Supervisors, the American
10 Association of Residential Mortgage Regulators, or other associations representing
11 governmental agencies.

12 (c) Information or material that is subject to a privilege or confidentiality under
13 subsection (a) of this section may not be subject to:

14 (1) Disclosure under any federal or state law governing the disclosure to
15 the public of information held by an officer or agency of the federal government or a state
16 that has received the information or material; or

17 (2) Subpoena, discovery, or admission into evidence, in any private civil
18 action or administrative process, unless with respect to any privilege held by [the
19 Nationwide Mortgage Licensing System and Registry] **NMLS** the person to whom the
20 information or material pertains waives, in whole or in part, that privilege.

21 (d) Any provisions of Title 4, Subtitles 1 through 5 of the General Provisions
22 Article relating to the disclosure of any information or material described in subsection (a)
23 of this section that are inconsistent with subsection (a) of this section shall be superseded
24 by the requirements of this section.

25 (e) This section does not apply to information or material relating to the
26 employment **AND ENGAGEMENT** history of, and publicly adjudicated disciplinary and
27 enforcement actions against, mortgage loan originators that is included in [the Nationwide
28 Mortgage Licensing System and Registry] **NMLS** and designated for access by the public.

29 11-621.

30 Nonfederally insured credit unions that [employ] **SPONSOR** mortgage loan
31 originators shall register these employees **OR INDEPENDENT CONTRACTORS** with [the
32 Nationwide Mortgage Licensing System and Registry] **NMLS** by providing the information
33 concerning the employees' **OR INDEPENDENT CONTRACTORS'** identity set forth in 12
34 U.S.C. § 5106(a)(2).

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is not intended to
36 conflict with or be interpreted to supersede any provision of the Labor and Employment

1 Article, including any standards established under that article for protecting employees
2 from abusive labor practices.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2023.