

AN ACT

To amend sections 109.572, 1321.57, 1322.02, 1322.03, 1322.031, 1322.04, 1322.041, 1322.051, 1322.06, 1322.061, 1322.062, 1322.07, 1322.10, 1322.11, 1322.99, 1343.011, 1345.01, 1345.02, 1345.03, 1345.05, 1345.07, 1345.09, 1349.25, 1349.27, 1349.31, 3953.23, 4735.05, 4763.03, 4763.05, 4763.06, 4763.12, 4763.13, and 4763.99 and to enact sections 1321.541, 1322.063, 1322.064, 1322.074, 1322.075, 1322.081, 1345.031, 1345.091, 1349.271, 1349.41, 1349.43, 1349.44, 1349.71, 1349.72, 3953.30, 3953.32, 3953.33, 3953.35, and 4763.19 of the Revised Code to modify the application of the Consumer Sales Practices Act and the Consumer Credit Mortgage Loan Law; to generally prohibit the appraisal of real estate for a mortgage loan without state certification or licensure; to require that a national criminal background check be conducted on all applicants for a mortgage broker certificate of registration, loan officer license, or real estate appraiser certificate or license; to modify the Mortgage Broker/Loan Officer Law with respect to disclosure of information, duties and standards of care, prohibited acts, record keeping, educational requirements, and pre-licensure examination; to modify the Title Insurance Agent Law; to establish the Consumer Education Finance Board; and to make other changes relative to mortgage lending.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 109.572, 1321.57, 1322.02, 1322.03, 1322.031, 1322.04, 1322.041, 1322.051, 1322.06, 1322.061, 1322.062, 1322.07, 1322.10, 1322.11, 1322.99, 1343.011, 1345.01, 1345.02, 1345.03, 1345.05, 1345.07, 1345.09, 1349.25, 1349.27, 1349.31, 3953.23, 4735.05, 4763.03, 4763.05, 4763.06, 4763.12, 4763.13, and 4763.99 be amended and sections 1321.541, 1322.063, 1322.064, 1322.074, 1322.075, 1322.081, 1345.031, 1345.091, 1349.271, 1349.41, 1349.43, 1349.44, 1349.71, 1349.72, 3953.30, 3953.32, 3953.33, 3953.35, and 4763.19 of the Revised Code be enacted to read as follows:

Sec. 109.572. (A)(1) Upon receipt of a request pursuant to section 121.08, 3301.32, 3301.541, 3319.39, 5104.012, 5104.013, or 5153.111 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, or a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(1)(a) of this section.

(2) On receipt of a request pursuant to section 5123.081 of the Revised Code with respect to an applicant for employment in any position with the department of mental retardation and developmental disabilities, pursuant to

section 5126.28 of the Revised Code with respect to an applicant for employment in any position with a county board of mental retardation and developmental disabilities, or pursuant to section 5126.281 of the Revised Code with respect to an applicant for employment in a direct services position with an entity contracting with a county board for employment, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2903.341, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, or 3716.11 of the Revised Code;

(b) An existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(2)(a) of this section.

(3) On receipt of a request pursuant to section 173.27, 173.394, 3712.09, 3721.121, or 3722.151 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check with respect to any person who has applied for employment in a position for which a criminal records check is required by those sections. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04,

2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(3)(a) of this section.

(4) On receipt of a request pursuant to section 3701.881 of the Revised Code with respect to an applicant for employment with a home health agency as a person responsible for the care, custody, or control of a child, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code or a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(4)(a) of this section.

(5) On receipt of a request pursuant to section 5111.95 or 5111.96 of the Revised Code with respect to an applicant for employment with a waiver agency participating in a department of job and family services administered home and community-based waiver program or an independent provider participating in a department administered home and community-based waiver program in a position that involves providing home and community-based waiver services to consumers with disabilities, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal

identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.12, 2919.24, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(5)(a) of this section.

(6) On receipt of a request pursuant to section 3701.881 of the Revised Code with respect to an applicant for employment with a home health agency in a position that involves providing direct care to an older adult, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323,

2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the Revised Code;

(b) An existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(6)(a) of this section.

(7) When conducting a criminal records check upon a request pursuant to section 3319.39 of the Revised Code for an applicant who is a teacher, in addition to the determination made under division (A)(1) of this section, the superintendent shall determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any offense specified in section 3319.31 of the Revised Code.

(8) On a request pursuant to section 2151.86 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(8)(a) of this section.

(9) When conducting a criminal records check on a request pursuant to section 5104.013 of the Revised Code for a person who is an owner, licensee, or administrator of a child day-care center or type A family day-care home or an authorized provider of a certified type B family day-care home, the superintendent, in addition to the determination made under division (A)(1) of this section, shall determine whether any information exists that indicates that the person has been convicted of or pleaded guilty to any of the following:

(a) A violation of section 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2921.11, 2921.13, or 2923.01 of the Revised Code, a violation of section 2923.02 or 2923.03 of the Revised Code that relates to a crime specified in this division or division (A)(1)(a) of this section, or a second violation of section 4511.19 of the Revised Code within five years of the date of application for licensure or certification.

(b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in division (A)(9)(a) of this section.

(10) On receipt of a request for a criminal records check from an individual pursuant to section 4749.03 or 4749.06 of the Revised Code, accompanied by a completed copy of the form prescribed in division (C)(1) of this section and a set of fingerprint impressions obtained in a manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check in the manner described in division (B) of this section to determine whether any information exists indicating that the person who is the subject of the request has been convicted of or pleaded guilty to a felony in this state or in any other state. If the individual indicates that a firearm will be carried in the course of business, the superintendent shall require information from the federal bureau of investigation as described in division (B)(2) of this section. The superintendent shall report the findings of the criminal records check and any information the federal bureau of investigation provides to the director of public safety.

(11) On receipt of a request pursuant to section 1322.03, 1322.031, or 4763.05 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check with respect to any person who has applied for a

license, permit, or certification from the department of commerce or a division in the department. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to any of the following: a violation of section 2913.02, 2913.11, 2913.31, 2913.51, or 2925.03 of the Revised Code; any other criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities, as set forth in Chapters 2909., 2911., 2913., 2915., 2921., 2923., and 2925. of the Revised Code; or any existing or former law of this state, any other state, or the United States that is substantially equivalent to those offenses.

(12) Not later than thirty days after the date the superintendent receives the request, completed form, and fingerprint impressions, the superintendent shall send the person, board, or entity that made the request any information, other than information the dissemination of which is prohibited by federal law, the superintendent determines exists with respect to the person who is the subject of the request that indicates that the person previously has been convicted of or pleaded guilty to any offense listed or described in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), ~~(10)~~, or (11) of this section, as appropriate. The superintendent shall send the person, board, or entity that made the request a copy of the list of offenses specified in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), ~~(10)~~, or (11) of this section, as appropriate. If the request was made under section 3701.881 of the Revised Code with regard to an applicant who may be both responsible for the care, custody, or control of a child and involved in providing direct care to an older adult, the superintendent shall provide a list of the offenses specified in divisions (A)(4) and (6) of this section.

(B) The superintendent shall conduct any criminal records check requested under section 121.08, 173.27, 173.394, ~~1322.03~~, ~~1322.031~~, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4749.03, 4749.06, ~~4763.05~~, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code as follows:

(1) The superintendent shall review or cause to be reviewed any relevant information gathered and compiled by the bureau under division (A) of section 109.57 of the Revised Code that relates to the person who is the subject of the request, including any relevant information contained in records that have been sealed under section 2953.32 of the Revised Code;

(2) If the request received by the superintendent asks for information from the federal bureau of investigation, the superintendent shall request from the federal bureau of investigation any information it has with respect to the person who is the subject of the request and shall review or cause to be reviewed any information the superintendent receives from that bureau.

(3) The superintendent or the superintendent's designee may request criminal history records from other states or the federal government pursuant to the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code.

(C)(1) The superintendent shall prescribe a form to obtain the information necessary to conduct a criminal records check from any person for whom a criminal records check is required by section 121.08, 173.27, 173.394, 1322.03, 1322.031, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4749.03, 4749.06, 4763.05, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The form that the superintendent prescribes pursuant to this division may be in a tangible format, in an electronic format, or in both tangible and electronic formats.

(2) The superintendent shall prescribe standard impression sheets to obtain the fingerprint impressions of any person for whom a criminal records check is required by section 121.08, 173.27, 173.394, 1322.03, 1322.031, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4749.03, 4749.06, 4763.05, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. Any person for whom a records check is required by any of those sections shall obtain the fingerprint impressions at a county sheriff's office, municipal police department, or any other entity with the ability to make fingerprint impressions on the standard impression sheets prescribed by the superintendent. The office, department, or entity may charge the person a reasonable fee for making the impressions. The standard impression sheets the superintendent prescribes pursuant to this division may be in a tangible format, in an electronic format, or in both tangible and electronic formats.

(3) Subject to division (D) of this section, the superintendent shall prescribe and charge a reasonable fee for providing a criminal records check requested under section 121.08, 173.27, 173.394, 1322.03, 1322.031, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4749.03, 4749.06, 4763.05, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The person making a criminal records request under section 121.08, 173.27, 173.394, 1322.03, 1322.031, 2151.86, 3301.32, 3301.541, 3319.39,

3701.881, 3712.09, 3721.121, 3722.151, 4749.03, 4749.06, 4763.05, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code shall pay the fee prescribed pursuant to this division. A person making a request under section 3701.881 of the Revised Code for a criminal records check for an applicant who may be both responsible for the care, custody, or control of a child and involved in providing direct care to an older adult shall pay one fee for the request.

(4) The superintendent of the bureau of criminal identification and investigation may prescribe methods of forwarding fingerprint impressions and information necessary to conduct a criminal records check, which methods shall include, but not be limited to, an electronic method.

(D) A determination whether any information exists that indicates that a person previously has been convicted of or pleaded guilty to any offense listed or described in division (A)(1)(a) or (b), (A)(2)(a) or (b), (A)(3)(a) or (b), (A)(4)(a) or (b), (A)(5)(a) or (b), (A)(6)(a) or (b), (A)(7)(a) or (b), (A)(8)(a) or (b), ~~or (A)(9)(a) or (b)~~, or (A)(11) of this section that is made by the superintendent with respect to information considered in a criminal records check in accordance with this section is valid for the person who is the subject of the criminal records check for a period of one year from the date upon which the superintendent makes the determination. During the period in which the determination in regard to a person is valid, if another request under this section is made for a criminal records check for that person, the superintendent shall provide the information that is the basis for the superintendent's initial determination at a lower fee than the fee prescribed for the initial criminal records check.

(E) As used in this section:

(1) "Criminal records check" means any criminal records check conducted by the superintendent of the bureau of criminal identification and investigation in accordance with division (B) of this section.

(2) "Home and community-based waiver services" and "waiver agency" have the same meanings as in section 5111.95 of the Revised Code.

(3) "Independent provider" has the same meaning as in section 5111.96 of the Revised Code.

(4) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

(5) "Older adult" means a person age sixty or older.

Sec. 1321.541. (A) The attorney general may directly bring an action to enjoin a violation of sections 1321.51 to 1321.60 of the Revised Code with the same rights, privileges, and powers as those described in section 1345.06 of the Revised Code. The prosecuting attorney of the county in which the

action may be brought may bring an action to enjoin a violation of sections 1321.51 to 1321.60 of the Revised Code only if the prosecuting attorney first presents any 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.

(B)(1) The prosecuting attorney of the county in which an alleged offense may be prosecuted may initiate criminal proceedings under sections 1321.51 to 1321.60 of the Revised Code.

(2) In order to initiate criminal proceedings under sections 1321.51 to 1321.60 of the Revised Code, the attorney general shall first present any evidence of criminal violations to the prosecuting attorney of the county in which the alleged offense may be prosecuted. If, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations, the attorney general may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries.

(C) These powers of the attorney general shall be in addition to any other applicable powers of the attorney general.

Sec. 1321.57. (A) Notwithstanding any other provisions of the Revised Code, a registrant may contract for and receive interest, calculated according to the actuarial method, at a rate or rates not exceeding twenty-one per cent per year on the unpaid principal balances of the loan. Loans may be interest-bearing or precomputed.

(B) For purposes of computation of time on interest-bearing and precomputed loans, including, but not limited to, the calculation of interest, a month is considered one-twelfth of a year, and a day is considered one three hundred sixty-fifth of a year when calculation is made for a fraction of a month. A year is as defined in section 1.44 of the Revised Code. A month is that period described in section 1.45 of the Revised Code. Alternatively, a registrant may consider a day as one three hundred sixtieth of a year and each month as having thirty days.

(C) With respect to interest-bearing loans:

(1)(a) Interest shall be computed on unpaid principal balances outstanding from time to time, for the time outstanding.

(b) As an alternative to the method of computing interest set forth in division (C)(1)(a) of this section, a registrant may charge and collect interest for the first installment period based on elapsed time from the date of the loan to the first scheduled payment due date, and for each succeeding installment period from the scheduled payment due date to the next

scheduled payment due date, regardless of the date or dates the payments are actually made.

(c) Whether a registrant computes interest pursuant to division (C)(1)(a) or (b) of this section, each payment shall be applied first to unpaid charges, then to interest, and the remainder to the unpaid principal balance. However, if the amount of the payment is insufficient to pay the accumulated interest, the unpaid interest continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the principal balance.

(2) Interest shall not be compounded, collected, or paid in advance. However, both of the following apply:

(a) Interest may be charged to extend the first monthly installment period by not more than fifteen days, and the interest charged for the extension may be added to the principal amount of the loan.

(b) If part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under the new loan contract may include any unpaid interest that has accrued. The resulting loan contract shall be deemed a new and separate loan transaction for purposes of this section. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in division (D)(3) of this section.

(D) With respect to precomputed loans:

(1) Loans shall be repayable in monthly installments of principal and interest combined, except that the first installment period may exceed one month by not more than fifteen days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days; and provided further that monthly installment payment dates may be omitted to accommodate borrowers with seasonal income.

(2) Payments may be applied to the combined total of principal and precomputed interest until maturity of the loan. A registrant may charge interest after the original or deferred maturity of a precomputed loan at the rate specified in division (A) of this section on all unpaid principal balances for the time outstanding.

(3) When any loan contract is paid in full by cash, renewal, refinancing, or a new loan, one month or more before the final installment due date, the registrant shall refund, or credit the borrower with, the total of the applicable charges for all fully unexpired installment periods, as originally scheduled or as deferred, that follow the day of prepayment. If the prepayment is made other than on a scheduled installment due date, the nearest scheduled installment due date shall be used in such computation. If the prepayment

occurs prior to the first installment due date, the registrant may retain one-thirtieth of the applicable charge for a first installment period of one month for each day from date of loan to date of prepayment, and shall refund, or credit the borrower with, the balance of the total interest contracted for. If the maturity of the loan is accelerated for any reason and judgment is entered, the registrant shall credit the borrower with the same refund as if prepayment in full had been made on the date the judgment is entered.

(4) If the parties agree in writing, either in the loan contract or in a subsequent agreement, to a deferment of wholly unpaid installments, a registrant may grant a deferment and may collect a deferment charge as provided in this section. A deferment postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred, for a period equal to the deferment period. The deferment period is that period during which no installment is scheduled to be paid by reason of the deferment. The deferment charge for a one-month period may not exceed the applicable charge for the installment period immediately following the due date of the last undeferred installment. A proportionate charge may be made for deferment for periods of more or less than one month. A deferment charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period. If a loan is prepaid in full during a deferment period, the registrant shall make, or credit to the borrower, a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan in full.

(E) A registrant, at the request of the borrower, may obtain, on one or more borrowers, credit life insurance, credit accident and health insurance, and unemployment insurance. The premium or identifiable charge for the insurance may be included in the principal amount of the loan and may not exceed the premium rate filed by the insurer with the superintendent of insurance and not disapproved by the superintendent. If a registrant obtains the insurance at the request of the borrower, the borrower shall have the right to cancel the insurance for a period of twenty-five days after the loan is made. If the borrower chooses to cancel the insurance, the borrower shall give the registrant written notice of this choice and shall return all of the policies or certificates of insurance or notices of proposed insurance to the registrant during such period, and the full premium or identifiable charge for the insurance shall be refunded to the borrower by the registrant. If the borrower requests, in the notice to cancel the insurance, that this refund be applied to reduce the balance of a precomputed loan, the registrant shall

credit the amount of the refund plus the amount of interest applicable to the refund to the loan balance.

If the registrant obtains the insurance at the request of the borrower, the registrant shall not charge or collect interest on any insured amount that remains unpaid after the insured borrower's date of death.

(F) A registrant may require the borrower to provide insurance or a loss payable endorsement covering reasonable risks of loss, damage, and destruction of property used as security for the loan and with the consent of the borrower such insurance may cover property other than that which is security for the loan. The amount and term of required property insurance shall be reasonable in relation to the amount and term of the loan contract and the type and value of the security, and the insurance shall be procured in accordance with the insurance laws of this state. The purchase of this insurance through the registrant or an agent or broker designated by the registrant shall not be a condition precedent to the granting of the loan. If the borrower purchases the insurance from or through the registrant or from another source, the premium may be included in the principal amount of the loan.

(G) On loans secured by an interest in real estate, all of the following apply:

(1) A registrant may charge and receive up to two points, and a prepayment penalty not in excess of one per cent of the original principal amount of the loan. Points may be paid by the borrower at the time of the loan or may be included in the principal amount of the loan. On a refinancing, a registrant may not charge under division (G)(1) of this section either of the following:

(a) Points on the portion of the principal amount that is applied to the unpaid principal amount of the refinanced loan, if the refinancing occurs within one year after the date of the refinanced loan on which points were charged;

(b) A prepayment penalty.

(2) As an alternative to the prepayment penalty described in division (G)(1) of this section, a registrant may contract for, charge, and receive the prepayment penalty described in division (G)(2) of this section for the prepayment of a loan prior to ~~three~~ two years after the date the loan contract is executed. This prepayment penalty shall not exceed ~~three~~ two per cent of the original principal amount of the loan if the loan is paid in full prior to one year after the date the loan contract is executed. The penalty shall not exceed ~~two~~ one per cent of the original principal amount of the loan if the loan is paid in full at any time from one year, but prior to two years, after the

date the loan contract is executed. ~~The penalty shall not exceed one per cent of the original principal amount of the loan if the loan is paid in full at any time from two years, but prior to three years, after the date the loan contract is executed.~~ A registrant shall not charge or receive a prepayment penalty under division (G)(2) of this section if any of the following applies:

(a) The loan is a refinancing by the same registrant or a registrant to whom the loan has been assigned;

(b) The loan is paid in full as a result of the sale of the real estate that secures the loan;

(c) The loan is paid in full with the proceeds of an insurance claim against an insurance policy that insures the life of the borrower or an insurance policy that covers loss, damage, or destruction of the real estate that secures the loan.

(3) Division (G) of this section is not a limitation on discount points or other charges for purposes of section 501(b)(4) of the "Depository Institutions Deregulation and Monetary Control Act of 1980," 94 Stat. 161, 12 U.S.C.A. 1735f-7 note.

(H)(1) In addition to the interest and charges provided for by this section, no further or other amount, whether in the form of broker fees, placement fees, or any other fees whatsoever, shall be charged or received by the registrant, except costs and disbursements in connection with any suit to collect a loan or any lawful activity to realize on a security interest or mortgage after default, including reasonable attorney fees incurred by the registrant as a result of the suit or activity and to which the registrant becomes entitled by law, and except the following additional charges which may be included in the principal amount of the loan or collected at any time after the loan is made:

(a) The amounts of fees authorized by law to record, file, or release security interests and mortgages on a loan;

(b) With respect to a loan secured by an interest in real estate, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this section:

(i) Fees or premiums for title examination, abstract of title, title insurance, surveys, title endorsements, title binders, title commitments, home inspections, or pest inspections; settlement or closing costs; courier fees; and any federally mandated flood plain certification fee;

(ii) If not paid to the registrant, an employee of the registrant, or a person related to the registrant, fees for preparation of a mortgage, settlement statement, or other documents, fees for notarizing mortgages and other documents, appraisal fees, and fees for any federally mandated

inspection of home improvement work financed by a second mortgage loan;

(c) Fees for credit investigations not exceeding ten dollars.

(2) Division (H)(1) of this section does not limit the rights of registrants to engage in other transactions with borrowers, provided the transactions are not a condition of the loan.

(I) If the loan contract or security instrument contains covenants by the borrower to perform certain duties pertaining to insuring or preserving security and the registrant pursuant to the loan contract or security instrument pays for performance of the duties on behalf of the borrower, the registrant may add the amounts paid to the unpaid principal balance of the loan or collect them separately. A charge for interest may be made for sums advanced not exceeding the rate of interest permitted by division (A) of this section. Within a reasonable time after advancing a sum, the registrant shall notify the borrower in writing of the amount advanced, any interest charged with respect to the amount advanced, any revised payment schedule, and shall include a brief description of the reason for the advance.

(J)(1) In addition to points authorized under division (G) of this section, a registrant may charge and receive the following:

(a) With respect to secured loans: if the principal amount of the loan is less than five hundred dollars, loan origination charges not exceeding fifteen dollars; if the principal amount of the loan is at least five hundred dollars but less than one thousand dollars, loan origination charges not exceeding thirty dollars; if the principal amount of the loan is at least one thousand dollars but less than two thousand dollars, loan origination charges not exceeding one hundred dollars; if the principal amount of the loan is at least two thousand dollars but less than five thousand dollars, loan origination charges not exceeding two hundred dollars; and if the principal amount of the loan is at least five thousand dollars, loan origination charges not exceeding the greater of two hundred fifty dollars or one per cent of the principal amount of the loan.

(b) With respect to unsecured loans: if the principal amount of the loan is less than five hundred dollars, loan origination charges not exceeding fifteen dollars; if the principal amount of the loan is at least five hundred dollars but less than one thousand dollars, loan origination charges not exceeding thirty dollars; if the principal amount of the loan is at least one thousand dollars but less than five thousand dollars, loan origination charges not exceeding one hundred dollars; and if the principal amount of the loan is at least five thousand dollars, loan origination charges not exceeding the greater of two hundred fifty dollars or one per cent of the principal amount of the loan.

(2) If a refinancing occurs within ninety days after the date of the refinanced loan, a registrant may not impose loan origination charges on the portion of the principal amount that is applied to the unpaid principal amount of the refinanced loan.

(3) Loan origination charges may be paid by the borrower at the time of the loan or may be included in the principal amount of the loan.

(K) A registrant may charge and receive check collection charges not greater than twenty dollars plus any amount passed on from other financial institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason.

(L) If the loan contract so provides, a registrant may collect a default charge on any installment not paid in full within ten days after its due date. For this purpose, all installments are considered paid in the order in which they become due. Any amounts applied to an outstanding loan balance as a result of voluntary release of a security interest, sale of security on the loan, or cancellation of insurance shall be considered payments on the loan, unless the parties otherwise agree in writing at the time the amounts are applied. The amount of the default charge shall not exceed the greater of five per cent of the scheduled installment or fifteen dollars.

Sec. 1322.02. (A)(1) No person, on the person's own behalf or on behalf of any other person, shall act as a mortgage broker without first having obtained a certificate of registration from the superintendent of financial institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in this state. A registrant shall maintain an office location in this state for the transaction of business as a mortgage broker in this state.

(2) No person shall act or hold that person's self out as a mortgage broker under the authority or name of a registrant or person exempt from sections 1322.01 to 1322.12 of the Revised Code without first having obtained a certificate of registration from the superintendent for every office to be maintained by the person for the transaction of business as a mortgage broker in this state.

(B) No person, on the person's own behalf or on behalf of any other person, shall act as a loan officer without first having obtained a license from the superintendent. A loan officer shall not be employed by more than one mortgage broker at any one time.

(C)(1) The following persons are exempt from sections 1322.01 to 1322.12 of the Revised Code only with respect to business engaged in or authorized by their charter, license, authority, approval, or certificate, or as otherwise authorized by division (C)(1)(g) of this section:

(a) A bank, savings bank, savings and loan association, ~~or credit union,~~ or credit union service organization organized under the laws of this state, another state, or the United States, or a subsidiary or affiliate of a bank, savings bank, savings and loan association, ~~or credit union,~~ or credit union service organization. As used in this division, "affiliate" means an entity that controls, is controlled by, or is under common control with, a bank, savings bank, savings and loan association, credit union, or credit union service organization and that the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration has the authority to examine, supervise, and regulate including with respect to the affiliate's compliance with applicable consumer protection requirements.

(b) A budget and debt counseling service, as defined in division (D) of section 2716.03 of the Revised Code, provided that the service is a nonprofit organization exempt from taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, and that the service is in compliance with Chapter 4710. of the Revised Code;

(c) A consumer reporting agency that is in substantial compliance with the "Fair Credit Reporting Act," 84 Stat. 1128, 15 U.S.C.A. 1681a, as amended;

(d) Any political subdivision, or any governmental or other public entity, corporation, or agency, in or of the United States or any state of the United States;

(e) A college or university, or controlled entity of a college or university, as defined in section 1713.05 of the Revised Code;

(f) A person registered under sections 1321.51 to 1321.60 of the Revised Code, provided that not more than five per cent of the person's mortgage loans constitute table-funding mortgage loans or warehouse-lending mortgage loans. Division (C)(1)(f) of this section does not include any person that is also registered or licensed under sections 1322.01 to 1322.12 of the Revised Code.

(g) A mortgage banker. For purposes of division (C)(1)(g) of this section, "mortgage banker" means any person that makes, services, buys, or sells mortgage loans, that underwrites the loans, and that meets at least one of the following criteria:

(i) The person has been directly approved by the United States department of housing and urban development as a nonsupervised mortgagee with participation in the direct endorsement program. Division (C) (1) (g) (i) of this section includes a person that has been directly

approved by the United States department of housing and urban development as a nonsupervised mortgagee with participation in the direct endorsement program and that makes loans in excess of the applicable loan limit set by the federal national mortgage association, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the United States department of housing and urban development. Division (C)(1)(g)(i) of this section does not include a mortgagee approved as a loan correspondent.

(ii) The person has been directly approved by the federal national mortgage association as a seller/servicer. Division (C) (1) (g) (ii) of this section includes a person that has been directly approved by the federal national mortgage association as a seller/servicer and that makes loans in excess of the applicable loan limit set by the federal national mortgage association, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the federal national mortgage association.

(iii) The person has been directly approved by the federal home loan mortgage corporation as a seller/servicer. Division (C) (1) (g) (iii) of this section includes a person that has been directly approved by the federal home loan mortgage corporation as a seller/servicer and that makes loans in excess of the applicable loan limit set by the federal home loan mortgage corporation, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the federal home loan mortgage corporation.

(iv) The person has been directly approved by the United States department of veterans affairs as a nonsupervised automatic lender. Division (C)(1)(g)(iv) of this section does not include a person directly approved by the United States department of veterans affairs as a nonsupervised lender, an agent of a nonsupervised automatic lender, or an agent of a nonsupervised lender.

(h) A person created solely for the purpose of securitizing loans secured by an interest in real estate, provided the person does not service the loans. For purposes of division (C)(1)(h) of this section, "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.

(2) Any individual who is employed by a person exempt from sections 1322.01 to 1322.12 of the Revised Code is also exempt from those sections to the extent the individual is acting within the scope of the individual's employment and within the scope of the exempt person's charter, license, authority, approval, or certificate.

Sec. 1322.03. (A) An application for a certificate of registration as a mortgage broker shall be in writing, under oath, and in the form prescribed by the superintendent of financial institutions. The application shall be accompanied by a nonrefundable application fee of three hundred fifty dollars for each location of an office to be maintained by the applicant in accordance with division (A) of section 1322.02 of the Revised Code; however, an applicant that is registered under sections 1321.51 to 1321.60 of the Revised Code shall not be required to pay an application fee. The application shall provide all of the following:

(1) The location or locations where the business is to be transacted and whether any location is a residence. If any location where the business is to be transacted is a residence, the application shall be accompanied by a certified copy of a zoning permit authorizing the use of the residence for commercial purposes, or shall be accompanied by a written opinion or other document issued by the county or political subdivision where the residence is located certifying that the use of the residence to transact business as a mortgage broker is not prohibited by the county or political subdivision. The application also shall be accompanied by a photograph of each location at which the business will be transacted.

(2)(a) In the case of a sole proprietor, the name and address of the sole proprietor;

(b) In the case of a partnership, the name and address of each partner;

(c) In the case of a corporation, the name and address of each shareholder owning five per cent or more of the corporation;

(d) In the case of any other entity, the name and address of any person that owns five per cent or more of the entity that will transact business as a mortgage broker.

(3) If the applicant is a partnership, corporation, limited liability company, or any other business entity or association, the applicant shall designate an employee or owner of the applicant as the applicant's operations manager. While acting as the operations manager, the employee or owner shall not be employed by any other mortgage broker.

(4) Evidence that the sole proprietor or the person designated on the application pursuant to division (A)(3) of this section, as applicable, possesses at least three years of experience in the mortgage and lending field, which experience may include employment with or as a mortgage broker or with a financial institution, mortgage lending institution, or other lending institution, or possesses at least three years of other experience related specifically to the business of mortgage loans that the superintendent determines meets the requirements of division (A)(4) of this section;

(5) On or after January 1, 2007, evidence that the sole proprietor or the person designated on the application pursuant to division (A)(3) of this section has successfully completed either of the following:

(a) At least twenty-four hours of live classroom instruction in a course or program of study approved by the superintendent that consists of at least all of the following:

(i) Four hours of instruction concerning state and federal mortgage lending laws, which shall include no less than two hours on this chapter;

(ii) Four hours of instruction concerning the Ohio consumer sales practices act, Chapter 1345. of the Revised Code, as it applies to registrants and licensees;

(iii) Four hours of instruction concerning the loan application process;

(iv) Two hours of instruction concerning the underwriting process;

(v) Two hours of instruction concerning the secondary market for mortgage loans;

(vi) Four hours of instruction concerning the loan closing process;

(vii) Two hours of instruction covering basic mortgage financing concepts and terms;

(viii) Two hours of instruction concerning the ethical responsibilities of a registrant, including with respect to confidentiality, consumer counseling, and the duties and standards of care created in section 1322.081 of the Revised Code.

(b) Other post-secondary education related specifically to the business of mortgage loans that the superintendent determines meets the requirements of division (A)(5)(a) of this section.

Division (A)(5) of this section does not apply to any applicant who has an application on file with the division of financial institutions prior to January 1, 2007.

The evidence submitted by the applicant pursuant to division (A)(5) of this section may be in the form of transcripts or a statement indicating that the applicant has, and will maintain, transcripts at the applicant's place of business for a period of five years for inspection by the superintendent at the superintendent's request.

(6) Evidence of compliance with the surety bond requirements of section 1322.05 of the Revised Code and with sections 1322.01 to 1322.12 of the Revised Code;

~~(7)~~ In the case of a foreign business entity, evidence that it maintains a license or registration pursuant to Chapter 1703., 1705., 1775., 1777., 1782., or 1783. of the Revised Code to transact business in this state;

~~(7)~~(8) A statement as to whether the applicant or, to the best of the

applicant's knowledge, any shareholder, member, partner, operations manager, or employee of the applicant has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities;

~~(8)~~(9) A statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, operations manager, or employee of the applicant has been subject to any adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty;

~~(9)~~(10) Evidence that the applicant's operations manager has successfully completed the examination required under division (A) of section 1322.051 of the Revised Code;

~~(10)~~(11) Any further information that the superintendent requires.

(B) Upon the filing of the application and payment of the application fee, the superintendent of financial institutions shall investigate the applicant as set forth in division (B) of this section. ~~The investigation shall include~~

(1) The superintendent shall request the superintendent of the bureau of criminal identification and investigation, or a vendor approved by the bureau, to conduct a criminal records check based on the applicant's fingerprints of the applicant and in accordance with division (A)(11) of section 109.572 of the Revised Code. Notwithstanding division (J) of section 121.08 of the Revised Code, the superintendent of financial institutions shall request that criminal record information from the federal bureau of investigation be obtained as part of the criminal records check. Any fee required under division (C)(3) of section 109.572 of the Revised Code shall be paid by the applicant.

(2) The superintendent shall conduct a civil records check. If,

(3) If, in order to issue a certificate of registration to an applicant, additional investigation by the superintendent outside this state is necessary, the superintendent may require the applicant to advance sufficient funds to pay the actual expenses of the investigation, if it appears that these expenses will exceed three hundred fifty dollars. The superintendent shall provide the applicant with an itemized statement of the actual expenses that the applicant is required to pay.

(C) ~~All~~ The superintendent shall pay all funds advanced and application and renewal fees and penalties ~~paid to the superintendent under receives pursuant to this section and section 1322.04 of the Revised Code shall be paid by the superintendent~~ to the treasurer of state to the credit of the consumer finance fund created in section 1321.21 of the Revised Code.

(D) If an application for a certificate of registration does not contain all of the information required under division (A) of this section, and if that information is not submitted to the superintendent within ninety days after the superintendent requests the information in writing, the superintendent may consider the application withdrawn.

(E) A certificate of registration, ~~or~~ and the authority granted under ~~such~~ a that certificate, is not transferable or assignable and cannot be franchised by contract or any other means.

(F) The registration requirements of this chapter apply to any person acting as a mortgage broker, and no person is exempt from the requirements of this chapter on the basis of prior work or employment as a mortgage broker.

Sec. 1322.031. (A) An application for a license as a loan officer shall be in writing, under oath, and in the form prescribed by the superintendent of financial institutions. The application shall be accompanied by a nonrefundable application fee of one hundred dollars and shall provide all of the following:

(1) The name and address of the applicant;

(2) A statement as to whether the applicant has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities;

(3) A statement as to whether the applicant has been subject to an adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty;

(4) For loan officer applications submitted on or after January 1, 2007, proof, as determined by the superintendent, that the applicant has successfully completed at least twenty-four hours of live classroom instruction in a course or program of study approved by the superintendent that consists of at least all of the following:

(a) Four hours of instruction concerning state and federal mortgage lending laws, which shall include no less than two hours on this chapter;

(b) Four hours of instruction concerning the Ohio consumer sales practices act, Chapter 1345. of the Revised Code, as it applies to registrants and licensees;

(c) Four hours of instruction concerning the loan application process;

(d) Two hours of instruction concerning the underwriting process;

(e) Two hours of instruction concerning the secondary market for mortgage loans;

(f) Four hours of instruction concerning the loan closing process;

(g) Two hours of instruction covering basic mortgage financing concepts and terms;

(h) Two hours of instruction concerning the ethical responsibilities of a licensee, including with respect to confidentiality, consumer counseling, and the duties and standards of care created in section 1322.081 of the Revised Code.

Division (A)(4) of this section does not apply to any applicant who has an application on file with the division of financial institutions prior to January 1, 2007.

The proof submitted by the applicant pursuant to division (A)(4) of this section may be in the form of transcripts or a statement indicating that the applicant has, and will maintain, transcripts at the applicant's place of business for a period of five years for inspection by the superintendent at the superintendent's request.

(5) Any further information that the superintendent requires.

(B) Upon the filing of the application and payment of the application fee, the superintendent of financial institutions shall investigate the applicant as set forth in division (B) of this section. ~~The investigation shall include~~

(1) The superintendent shall request the superintendent of the bureau of criminal identification and investigation, or a vendor approved by the bureau, to conduct a criminal records check based on the applicant's fingerprints of the applicant and in accordance with division (A)(11) of section 109.572 of the Revised Code. Notwithstanding division (J) of section 121.08 of the Revised Code, the superintendent of financial institutions shall request that criminal record information from the federal bureau of investigation be obtained as part of the criminal records check. Any fee required under division (C)(3) of section 109.572 of the Revised Code shall be paid by the applicant.

(2) The superintendent shall conduct a civil records check. ~~If~~

(3) If, in order to issue a license to an applicant, additional investigation by the superintendent outside this state is necessary, the superintendent may require the applicant to advance sufficient funds to pay the actual expenses of the investigation, if it appears that these expenses will exceed one hundred dollars. The superintendent shall provide the applicant with an itemized statement of the actual expenses that the applicant is required to pay.

(C) ~~All~~ The superintendent shall pay all funds advanced and application and renewal fees and penalties paid to the superintendent ~~under~~ receives pursuant to this section and section 1322.041 of the Revised Code ~~shall be~~

~~paid by the superintendent~~ to the treasurer of state to the credit of the consumer finance fund created in section 1321.21 of the Revised Code.

(D) If an application for a license does not contain all of the information required under division (A) of this section, and if that information is not submitted to the superintendent within ninety days after the superintendent requests the information in writing, the superintendent may consider the application withdrawn.

(E)(1) The business of a loan officer shall principally be transacted at an office of the employing mortgage broker, which office is registered in accordance with division (A) of section 1322.02 of the Revised Code. Each original license shall be deposited with and maintained by the employing mortgage broker at the mortgage broker's main office. A copy of the license shall be maintained and displayed at the office where the loan officer principally transacts business.

(2) If a loan officer's employment is terminated, the mortgage broker shall return the original license to the superintendent within five business days after the termination. The licensee may request the transfer of the license to another mortgage broker by submitting a relocation application, along with a fifteen dollar fee, to the superintendent or may request the superintendent in writing to hold the license in escrow for a period not to exceed one year. Any licensee whose license is held in escrow shall cease activity as a loan officer.

A mortgage broker may employ a loan officer on a temporary basis pending the transfer of the loan officer's license to the mortgage broker, if the mortgage broker receives written confirmation from the superintendent that the loan officer is licensed under sections 1322.01 to 1322.12 of the Revised Code.

(F) A license, or the authority granted under ~~such a~~ that license, is not assignable and cannot be franchised by contract or any other means.

Sec. 1322.04. (A) Upon the conclusion of the investigation required under division (B) of section 1322.03 of the Revised Code, the superintendent of financial institutions shall issue a certificate of registration to the applicant if the superintendent finds that the following conditions are met:

(1) Except as otherwise provided in division (A) of section 1322.03 of the ~~Revised~~ Revised Code, the application is accompanied by the application fee. If a check or other draft instrument is returned to the superintendent for insufficient funds, the superintendent shall notify the registrant by certified mail, return receipt requested, that the certificate of registration issued in reliance on the check or other draft instrument will be canceled unless the

registrant, within thirty days after receipt of the notice, submits the application fee and a one-hundred-dollar penalty to the superintendent. If the registrant does not submit the application fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned to the superintendent for insufficient funds, the certificate of registration shall be canceled immediately without a hearing, and the registrant shall cease activity as a mortgage broker.

(2) If the application is for a location that is a residence, that the applicant has obtained a valid zoning permit authorizing the use of the residence for commercial purposes, or has obtained a valid written opinion or other document issued by the county or political subdivision where the residence is located certifying that the use of the residence to transact business as a mortgage broker is not prohibited by the county or political subdivision. The application also is accompanied by a photograph of each location at which the mortgage broker's business will be transacted.

(3) The sole proprietor or the person designated on the application pursuant to division (A)(3) of section 1322.03 of the Revised Code, as applicable, meets the experience requirements provided in division (A)(4) of section 1322.03 of the Revised Code and the education requirements set forth in division (A)(5) of section 1322.03 of the Revised Code.

(4) The applicant maintains all licenses and registrations required by the secretary of state.

(5) The applicant complies with the surety bond requirements of section 1322.05 of the Revised Code.

(6) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(7) Neither the applicant nor any shareholder, member, partner, operations manager, or employee of the applicant has pleaded guilty to or been convicted of any criminal offense described in division (A)(~~7~~)(8) of section 1322.03 of the Revised Code; or any violation of an existing or former law of this state, any other state, or the United States that substantially is equivalent to a criminal offense described in that division. However, if the applicant or any of those other persons has pleaded guilty to or been convicted of any such an offense other than theft, the superintendent shall not consider the offense if the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's or other person's activities and employment record since the conviction show that the applicant or other person is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant or other person will commit such an offense again.

(8) Neither the applicant nor any shareholder, member, partner, operations manager, or employee of the applicant has been subject to any adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty, or, if the applicant or any of those other persons has been subject to such a judgment, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's or other person's activities and employment record since the judgment show that the applicant or other person is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant or other person will be subject to such a judgment again.

(9) The applicant's operations manager successfully completed the examination required under division (A) of section 1322.051 of the Revised Code.

(10) 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 and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code.

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 divisions (A)(7), (A)(8), and (A)(10) of this section, the superintendent shall determine which partners, shareholders, or persons named in the application pursuant to division (A)(2) of section 1322.03 of the Revised Code must meet the conditions set forth in divisions (A)(7), (A)(8), and (A)(10) of this section. This determination shall be based on the extent and nature of the partner's, shareholder's, or person's ownership interest in the partnership, corporation, or other business entity or association that is the applicant.

(B) The certificate of registration issued pursuant to division (A) of this section may be renewed annually on or before the thirtieth day of April if the superintendent finds that all of the following conditions are met:

(1) The renewal application is accompanied by a nonrefundable renewal fee of three hundred fifty dollars for each location of an office to be maintained by the applicant in accordance with division (A) of section 1322.02 of the Revised Code; however, an applicant that is registered under sections 1321.51 to 1321.60 of the Revised Code shall not be required to pay a renewal fee. If a check or other draft instrument is returned to the superintendent for insufficient funds, the superintendent shall notify the registrant by certified mail, return receipt requested, that the certificate of registration renewed in reliance on the check or other draft instrument will be canceled unless the registrant, within thirty days after receipt of the

notice, submits the renewal fee and a one-hundred-dollar penalty to the superintendent. If the registrant does not submit the renewal fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned to the superintendent for insufficient funds, the certificate of registration shall be canceled immediately without a hearing and the registrant shall cease activity as a mortgage broker.

(2) On and after January 1, 2003, the operations manager designated under division (A)(3) of section 1322.03 of the Revised Code has completed, during the immediately preceding calendar year, at least six hours of continuing education as required under section 1322.052 of the Revised Code.

(3) The applicant meets the conditions set forth in divisions (A)(2) to (10) of this section.

(4) The applicant's certificate of registration is not subject to an order of suspension or revocation by the superintendent.

(C)(1) Subject to division (C)(2) of this section, if a renewal fee is received by the superintendent after the thirtieth day of April, the certificate of registration shall not be considered renewed, and the applicant shall cease activity as a mortgage broker and apply for a certificate of registration as a mortgage broker.

(2) Division (C)(1) of this section shall not apply if the applicant, no later than the thirty-first day of May, submits the renewal fee and a one-hundred-dollar penalty to the superintendent.

(D) If the person designated as the operations manager pursuant to division (A)(3) of section 1322.03 of the Revised Code is no longer the operations manager, the registrant shall do all of the following:

(1) Designate another person as the operations manager;

(2) Within ten days after the designation described in division (D)(1) of this section, notify the superintendent in writing of the designation;

(3) Submit any additional information that the superintendent requires to establish that the newly designated operations manager complies with the experience requirements set forth in division (A)(4) of section 1322.03 of the Revised Code.

Sec. 1322.041. (A) Upon the conclusion of the investigation required under division (B) of section 1322.031 of the Revised Code, the superintendent of financial institutions shall issue a loan officer license to the applicant if the superintendent finds that the following conditions are met:

(1) The application is accompanied by the application fee. If a check or other draft instrument is returned to the superintendent for insufficient

funds, the superintendent shall notify the licensee by certified mail, return receipt requested, that the license issued in reliance on the check or other draft instrument will be canceled unless the licensee, within thirty days after receipt of the notice, submits the application fee and a one-hundred-dollar penalty to the superintendent. If the licensee does not submit the application fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned to the superintendent for insufficient funds, the license shall be canceled immediately without a hearing, and the licensee shall cease activity as a loan officer.

(2) The applicant complies with sections 1322.01 to 1322.12 of the Revised Code.

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense described in division (A)(2) of section 1322.031 of the Revised Code, ~~or~~ and the applicant has not pleaded guilty to or been convicted of a violation of an existing or former law of this state, any other state, or the United States that substantially is equivalent to a criminal offense described in that division. However, if the applicant has been convicted of or pleaded guilty to any such an offense other than theft, the superintendent shall not consider the offense if the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

(4) The applicant has not been subject to an adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty, or, if the applicant has been subject to such a judgment, the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the judgment show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will be subject to such a judgment again.

(5) The applicant successfully completed the examination required under division (B) of section 1322.051 of the Revised Code and the education requirements set forth in division (A)(4) of section 1322.031 of the Revised Code.

(6) The applicant's 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 sections 1322.01 to 1322.12 of the Revised Code.

(B) The license issued under division (A) of this section may be

renewed annually on or before the thirtieth day of April if the superintendent finds that all of the following conditions are met:

(1) The renewal application is accompanied by a nonrefundable renewal fee of one hundred dollars. If a check or other draft instrument is returned to the superintendent for insufficient funds, the superintendent shall notify the licensee by certified mail, return receipt requested, that the license renewed in reliance on the check or other draft instrument will be canceled unless the licensee, within thirty days after receipt of the notice, submits the renewal fee and a one-hundred-dollar penalty to the superintendent. If the licensee does not submit the renewal fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned to the superintendent for insufficient funds, the license shall be canceled immediately without a hearing, and the licensee shall cease activity as a loan officer.

(2) On and after January 1, 2003, the loan officer has completed, during the immediately preceding calendar year, at least six hours of continuing education as required under section 1322.052 of the Revised Code.

(3) The applicant meets the conditions set forth in divisions (A)(2) to ~~(5)(6)~~ of this section.

(4) The applicant's license is not subject to an order of suspension or revocation by the superintendent.

(C)(1) Subject to division (C)(2) of this section, if a license renewal application or renewal fee is received by the superintendent after the thirtieth day of April, the license shall not be considered renewed, and the applicant shall cease activity as a loan officer.

(2) Division (C)(1) of this section shall not apply if the applicant, no later than the thirty-first day of May, submits the renewal application and fee and a one-hundred-dollar penalty to the superintendent.

Sec. 1322.051. (A) Each person designated under division (A)(3) of section 1322.03 of the Revised Code to act as operations manager for a mortgage broker business shall submit to an examination approved by the superintendent of financial institutions.

~~(B) Each licensee, within ninety days after the original issuance of the applicant for a loan officer license, shall successfully complete submit to an examination approved by the superintendent. Failure to comply with this division results in the termination of the license by operation of law.~~

Sec. 1322.06. (A) As often as the superintendent of financial institutions considers it necessary, the superintendent may examine the registrant's records pertaining to business transacted pursuant to sections 1322.01 to 1322.12 of the Revised Code.

(B) A registrant shall maintain records pertaining to business transacted pursuant to sections 1322.01 to 1322.12 of the Revised Code, including copies of all mortgage loan origination disclosure statements prepared in accordance with section 1322.062 of the Revised Code, for four years. No registrant shall fail to comply with this division.

Sec. 1322.061. (A)(1) The following information is ~~privileged and~~ confidential:

(a) Examination information, and any information leading to or arising from an examination;

(b) Investigation information, and any information arising from or leading to an investigation.

(2) The information described in division (A)(1) of this section shall remain ~~privileged and~~ confidential for all purposes except when it is necessary for the superintendent of financial institutions to take official action regarding the affairs of a registrant or licensee, or in connection with criminal or civil proceedings to be initiated by a prosecuting attorney or the attorney general. This information may also be introduced into evidence or disclosed when and in the manner authorized by section 1181.25 of the Revised Code.

(B) All application information, except social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information, is a public record as defined in section 149.43 of the Revised Code.

(C) This section does not prevent the division of financial institutions from releasing to or exchanging with other financial institution regulatory authorities information relating to registrants and licensees. For this purpose, a "financial institution regulatory authority" includes a regulator of a business activity in which a registrant or licensee is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a registrant or licensee engaged in that business activity. A registrant or licensee is engaged in a business activity, and a regulator of that business activity has jurisdiction over the registrant or licensee, whether the registrant or licensee conducts the activity directly or a subsidiary or affiliate of the registrant or licensee conducts the activity.

(D) This section does not prevent the division from releasing information relating to registrants and licensees to the attorney general ~~for purposes relating to the attorney general's administration of Chapter 1345. of the Revised Code~~, to the superintendent of real estate and professional

licensing for purposes relating to the administration of Chapters 4735. and 4763. of the Revised Code, to the superintendent of insurance for purposes relating to the administration of Chapter 3953. of the Revised Code, or to local law enforcement agencies and local prosecutors. Information the division releases ~~to the attorney general pursuant to this section remains privileged and confidential, and the attorney general may not disclose the information or introduce the information into evidence unless the superintendent authorizes the disclosure or introduction into evidence in connection with the attorney general's administration of Chapter 1345. of the Revised Code.~~

Sec. 1322.062. (A)(1) Within three business days after taking an application for a loan from a buyer, a registrant shall deliver to the buyer a mortgage loan origination disclosure statement that contains all of the following:

- (a) The name, address, and telephone number of the buyer;
 - (b) The typewritten name of the loan officer and the number designated on the loan officer's license;
 - (c) The street address, telephone number, and facsimile number of the registrant and the number designated on the registrant's certificate of registration;
 - (d) The signature of the loan officer or registrant;
 - (e) A statement indicating whether the buyer is to pay for the services of a bona fide third party if the registrant is unable to assist the buyer in obtaining a mortgage;
 - (f) A statement that describes the method by which the fee to be paid by the buyer to the registrant will be calculated and a good faith estimate of the total amount of that fee;
 - (g) A statement that the lender may pay compensation to the registrant;
 - (h) A description of all the services the registrant has agreed to perform for the buyer;
 - (i) A statement that the buyer has not entered into an exclusive agreement for brokerage services;
 - (j) If the loan applied for will exceed ninety per cent of the value of the real property, a statement, printed in boldface type of the minimum size of sixteen points, as follows: "You are applying for a loan that is more than 90% of your home's value. It will be hard for you to refinance this loan. If you sell your home, you might owe more money on the loan than you get from the sale."
 - (k) To acknowledge receipt, the signature of the buyer.
- (2) If the loan is a covered loan as defined in section 1349.25 of the

Revised Code, the registrant shall also deliver a copy of the mortgage loan origination disclosure statement to the lender.

(B) If there is any change in the information provided under division (A)(1)(~~f~~) or (~~h~~) of this section, the registrant shall provide the buyer with the revised mortgage loan origination disclosure statement and a written explanation of why the change occurred no later than ~~three days~~ twenty-four hours after the change occurs, or ~~the date~~ twenty-four hours before the loan is closed, whichever is earlier.

(C) A registrant shall deliver to the buyer, immediately upon receipt, a copy of any nonproprietary or publicly available credit score and report obtained regarding the buyer by the registrant for the purpose of the mortgage loan application;

If the loan officer or registrant uses an automated valuation model to determine an appraisal report, the registrant also shall include a copy of the automated valuation model report.

(D) A registrant shall deliver to the buyer, at the same time that the registrant delivers the mortgage loan origination disclosure statement pursuant to division (A) of this section, a good faith estimate statement that discloses the amount of or range of charges for the specific settlement services the buyer is likely to incur in connection with the mortgage loan. The good faith estimate statement shall meet the requirements of the "Real Estate Settlement Procedures Act," 88 Stat. 1724 (1974). 12 U.S.C.A. 2601 et seq., and shall include the following underlined notice in at least ten point type, new roman style:

"Nature of Relationship: In connection with this residential mortgage loan, you, the borrower(s), has/have requested assistance from (company name) in arranging credit. We do not distribute all products in the marketplace and cannot guarantee the lowest rate.

Termination: This agreement will continue until one of the following events occur:

1. The loan closes.
2. The request is denied.
3. The borrower withdraws the request.
4. The borrower decides to use another source for origination.
5. The borrower is provided a revised good faith estimate statement.

Notice to borrower(s): Signing this document does not obligate you to obtain a mortgage loan through this mortgage originator nor is this a loan commitment or an approval; nor is your interest rate locked at this time unless otherwise disclosed on a separate Rate Lock Disclosure Form. Do not sign this document until you have read and understood the information in it.

You will receive a re-disclosure of any increase in interest rate or if the total sum of disclosed settlement/closing costs increases by 10% or more of the original estimate. Should any such increase occur; mandatory re-disclosure must occur prior to the settlement or close of escrow."

(E) No registrant shall fail to comply with this section.

Sec. 1322.063. (A) In addition to the disclosures required under section 1322.062 of the Revised Code, a registrant shall, not later than twenty-four hours before a loan is closed, deliver to the buyer a written disclosure that includes the following:

(1) A statement indicating whether property taxes will be escrowed;

(2) A description of what is covered by the regular monthly payment, including principal, interest, taxes, and insurance, as applicable.

(B) No registrant shall fail to comply with this section.

Sec. 1322.064. (A) No registrant or licensee shall fail to do either of the following:

(1) Timely inform the buyer of any material change in the terms of the loan. For purposes of division (A)(1) of this section, "material change" means the following:

(a) A change in the type of loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment;

(b) A change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made;

(c) A change in the interest rate of more than 0.15%;

(d) A change in the regular monthly payment of principal and interest of more than five per cent;

(e) A change regarding the escrow of taxes or insurance;

(f) A change regarding the payment of private mortgage insurance.

(2) Timely inform the buyer if any fees payable by the buyer to the registrant or lender increase by more than ten per cent or one hundred dollars, whichever is greater.

(B) The disclosures required by this section shall be deemed timely if the registrant provides the buyer with the revised information not later than twenty-four hours after the change occurs, or twenty-four hours before the loan is closed, whichever is earlier.

(C) If an increase in the total amount of the fee to be paid by the buyer to the registrant is not disclosed in accordance with division (A)(2) of this section, the registrant shall refund to the buyer the amount by which the fee was increased. If the fee is financed into the loan, the registrant shall also refund to the buyer the interest that would accrue over the term of the loan on that excess amount.

Sec. 1322.07. No mortgage broker, registrant, licensee, or applicant for a certificate of registration or license under sections 1322.01 to 1322.12 of the Revised Code shall do any of the following:

(A) Obtain a certificate of registration or license through any false or fraudulent representation of a material fact or any omission of a material fact required by state law, or make any substantial misrepresentation in any registration or license application;

(B) Make false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means, or engage in a continued course of misrepresentations;

(C) Engage in conduct that constitutes improper, fraudulent, or dishonest dealings;

(D) Fail to notify the division of financial institutions within thirty days after the registrant, licensee, or applicant, in a court of competent jurisdiction of this state or any other state, is convicted of or pleads guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities;

(E) Knowingly make, propose, or solicit fraudulent, false, or misleading statements on any mortgage document or on any document related to a mortgage, including a mortgage application, real estate appraisal, or real estate settlement or closing document. For purposes of this division, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

(F) Knowingly instruct, solicit, propose, or otherwise cause a buyer to sign in blank a mortgage related document;

(G) Knowingly compensate, instruct, induce, coerce, or intimidate, or attempt to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under Chapter 4763. of the Revised Code for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan;

(H) Promise to refinance a loan in the future at a lower interest rate or with more favorable terms, unless the promise is set forth in writing and is initialed by the buyer.

Sec. 1322.074. (A) As used in this section and section 1322.075 of the Revised Code:

(1) "Appraisal company" means a sole proprietorship, partnership,

corporation, limited liability company, or any other business entity or association, that employs or retains the services of a person licensed or certified under Chapter 4763. of the Revised Code for purposes of performing residential real estate appraisals for mortgage loans.

(2) "Immediate family" means a spouse residing in the person's household and any dependent child.

(B) Except as otherwise provided in division (C) of this section, no registrant, or any member of the registrant's immediate family, shall own or control a majority interest in an appraisal company.

(C) Division (B) of this section shall not apply to any registrant, or any member of the registrant's immediate family, who, on the effective date of this section, owns or controls a majority interest in an appraisal company. However, such ownership or control is subject to the following conditions:

(1) The registrant and members of the registrant's immediate family shall not increase their interest in the company.

(2) The interest is not transferable to a member of the registrant's immediate family.

(3) If the registrant is convicted of or pleads guilty to a criminal violation of sections 1322.01 to 1322.12 of the Revised Code or any criminal offense described in division (A)(1)(b) of section 1322.10 of the Revised Code, the superintendent of financial institutions may, as an alternative to any of the actions authorized under section 1322.10 of the Revised Code, order the registrant or members of the registrant's immediate family to divest their interest in the company.

Sec. 1322.075. (A) No registrant or licensee or person required to be registered or licensed under this chapter shall refer a buyer to any settlement service provider, including any title insurance company, without providing the buyer with written notice disclosing all of the following:

(1) Any business relationship that exists between the registrant, licensee, or person required to be registered or licensed under this chapter, and the provider to which the buyer is being referred, and any financial benefit that the registrant, licensee, or person may be provided because of the relationship;

(2) The percentage of ownership interest the registrant, licensee, or person required to be registered or licensed under this chapter has in the provider to which the buyer is being referred;

(3) The estimated charge or range of charges for the settlement service listed;

(4) The following statement, printed in boldface type of the minimum size of sixteen points: "There are frequently other settlement service

providers available with similar services. You are free to shop around to determine that you are receiving the best services and the best rate for these services."

(B) No registrant or licensee shall refer a buyer to an appraisal company, if the registrant or licensee, or a member of the registrant's or licensee's immediate family, has either of the following financial relationships with the appraisal company:

(1) An ownership or investment interest in the company, whether through debt, equity, or other means;

(2) Any compensation arrangement involving any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(C) No registrant or licensee shall knowingly enter into an arrangement or scheme, including a cross-referral arrangement, that has a principal purpose of assuring referrals by a registrant or licensee to a particular appraisal company that would violate division (B) of this section.

(D) The registrant, licensee, or person required to be registered or licensed under this chapter shall retain proof that the buyer received the written disclosures required by division (A) of this section for four years.

Sec. 1322.081. (A) A registrant, licensee, and any person required to be registered or licensed under this chapter, in addition to duties imposed by other statutes or common law, shall do all of the following:

(1) Safeguard and account for any money handled for the borrower;

(2) Follow reasonable and lawful instructions from the borrower;

(3) Act with reasonable skill, care, and diligence;

(4) Act in good faith and with fair dealing in any transaction, practice, or course of business in connection with the brokering or originating of any mortgage loan;

(5) Make reasonable efforts to secure a mortgage loan, from lenders with whom the registrant, licensee, or person regularly does business, with rates, charges, and repayment terms that are advantageous to the borrower.

(B) Division (A) of this section shall not apply to wholesale lenders. However, wholesale lenders are subject to all other requirements applicable to mortgage brokers and nonbank mortgage lenders. For purposes of this division, "wholesale lender" means a company that has been issued a mortgage broker certificate of registration and that enters into transactions with buyers exclusively through unaffiliated third-party mortgage brokers.

(C) The duties and standards of care created in this section cannot be waived or modified.

(D)(1) A buyer injured by a violation of this section may bring an action for recovery of damages.

(2) Damages awarded under division (D)(1) of this section shall not be less than all compensation paid directly or indirectly to a mortgage broker from any source, plus reasonable attorney's fees and court costs.

(3) The buyer may be awarded punitive damages.

(E) A buyer injured by a violation of this section 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 initiated under section 1322.11 of the Revised Code and the recovery of damages for a violation of this section is based on the same acts or circumstances as the basis for recovery of damages in section 1322.11 of the Revised Code.

Sec. 1322.10. (A) After notice and opportunity for a hearing conducted in accordance with Chapter 119. of the Revised Code, the superintendent of financial institutions may do the following:

(1) Suspend, revoke, or refuse to issue or renew a certificate of registration or license if the superintendent finds either of the following:

(a) A violation of or failure to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or any other law applicable to the business conducted under a certificate of registration;

(b) A conviction of or guilty plea to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

(2) Impose a fine of not more than one thousand dollars, 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 two thousand dollars for each day the violation is committed, repeated, or continued. All fines collected pursuant to this division shall be paid to the treasurer of state to the credit of the consumer finance fund created in section 1321.21 of the Revised Code. In determining the amount of a fine to be imposed pursuant to this division, the superintendent shall consider all of the following:

(a) The seriousness of the violation;

(b) The registrant's or licensee's good faith efforts to prevent the violation;

(c) The registrant's or licensee's history regarding violations and compliance with division orders;

(d) The registrant's or licensee's financial resources;

(e) Any other matters the superintendent considers appropriate in enforcing sections 1322.01 to 1322.12 of the Revised Code.

(B) The superintendent may investigate alleged violations of sections 1322.01 to 1322.12 of the Revised Code or the rules adopted under those sections or complaints concerning any such violation. The superintendent may make application to the court of common pleas for an order enjoining any such violation, and, upon a showing by the superintendent that a person has committed or is about to commit such a violation, the court shall grant an injunction, restraining order, or other appropriate relief.

(C) In conducting any investigation pursuant to this section, the superintendent may compel, by subpoena, witnesses to testify in relation to any matter over which the superintendent has jurisdiction and may require the production of any book, record, or other document pertaining to that matter. If a person fails to file any statement or report, obey any subpoena, give testimony, produce any book, record, or other document as required by a subpoena, or permit photocopying of any book, record, or other document subpoenaed, the court of common pleas of any county in this state, upon application made to it by the superintendent, shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify therein.

(D) If the superintendent determines that a person is engaged in or is believed to be engaged in activities that may constitute a violation of sections 1322.01 to 1322.12 of the Revised Code, the superintendent, after notice and a hearing conducted in accordance with Chapter 119. of the Revised Code, may issue a cease and desist order. Such an order shall be enforceable in the court of common pleas.

(E) If the superintendent revokes the certificate of registration or license of a registrant or licensee who is convicted of or pleads guilty to a criminal violation of any provision of sections 1322.01 to 1322.12 of the Revised Code or any criminal offense described in division (A)(1)(b) of this section, the revocation shall be permanent.

(F)(1) To protect the public interest, the superintendent may, without a prior hearing, do any of the following:

(a) Suspend the certificate of registration or license of a registrant or licensee who is convicted of or pleads guilty to a criminal violation of any provision of sections 1322.01 to 1322.12 of the Revised Code or any criminal offense described in division (A)(1)(b) of this section;

(b) Suspend the certificate of registration of a registrant who violates division (F) of section 1322.05 of the Revised Code;

(c) Suspend the certificate of registration or license of a registrant or licensee who fails to comply with a request made by the superintendent

under section 1322.03 or 1322.031 of the Revised Code to inspect qualifying education transcripts located at the registrant's or licensee's place of business.

(2) The superintendent shall, without a prior hearing, suspend the certificate of registration of a registrant whose operations manager has failed to fulfill the continuing education requirements of section 1322.052 of the Revised Code and suspend the license of a licensee who has failed to fulfill those continuing education requirements. The suspension shall continue until such time as the required continuing education is completed and a fine of five hundred dollars is paid to the treasurer of state to the credit of the consumer finance fund.

(3) The superintendent may, in accordance with Chapter 119. of the Revised Code, subsequently revoke any registration or license suspended under division (F)(1) of this section.

(4) The superintendent shall, in accordance with Chapter 119. of the Revised Code, adopt rules establishing the maximum amount of time a suspension under division (F) of this section may continue before a hearing is conducted.

Sec. 1322.11. (A)(1) A buyer injured by a violation of section 1322.02, 1322.062, ~~1322.063, 1322.064,~~ 1322.07, 1322.071, 1322.08, or 1322.09 of the Revised Code may bring an action for recovery of damages.

(2) Damages awarded under division (A)(1) of this section shall not be less than ~~the amount paid by the buyer to the mortgage broker~~ all compensation paid directly and indirectly to a mortgage broker from any source, plus reasonable attorney's fees and court costs.

(3) The buyer may be awarded punitive damages.

(B)(1) The superintendent of financial institutions, ~~the attorney general,~~ or a buyer may directly bring an action to enjoin a violation of sections 1322.01 to 1322.12 of the Revised Code. The attorney general may directly bring an action to enjoin a violation of sections 1322.01 to 1322.12 of the Revised Code with the same rights, privileges, and powers as those described in section 1345.06 of the Revised Code. The prosecuting attorney of the county in which the action may be brought may bring an action to enjoin a violation of sections 1322.01 to 1322.12 of the Revised Code only if the prosecuting attorney first presents any 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.

(2) The superintendent may initiate criminal proceedings under sections 1322.01 to 1322.12 of the Revised Code by presenting any evidence of criminal violation to the prosecuting attorney of the county in which the

offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the superintendent shall present any evidence of criminal violations to the attorney general, who may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries. These powers of the attorney general shall be in addition to any other applicable powers of the attorney general.

(3) The prosecuting attorney of the county in which an alleged offense may be prosecuted may initiate criminal proceedings under sections 1322.01 to 1322.12 of the Revised Code.

(4) In order to initiate criminal proceedings under sections 1322.01 to 1322.12 of the Revised Code, the attorney general shall first present any evidence of criminal violations to the prosecuting attorney of the county in which the alleged offense may be prosecuted. If, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations, the attorney general may proceed in the prosecution with all the rights, privileges, and powers described in division (B)(2) of this section.

(5) When a judgment under this section becomes final, the clerk of court shall mail a copy of the judgment, including supporting opinions, to the superintendent.

(C) The remedies provided by this section are in addition to any other remedy provided by law.

(D) In any proceeding or action brought under sections 1322.01 to 1322.12 of the Revised Code, the burden of proving an exemption under those sections is on the person claiming the benefit of the exemption.

(E) No person shall be deemed to violate sections 1322.01 to 1322.12 of the Revised Code with respect to any act taken or omission made in reliance on a written notice, written interpretation, or written report from the superintendent, unless there is a subsequent amendment to those sections, or rules promulgated thereunder, that affects the superintendent's notice, interpretation, or report.

(F) Upon disbursement of mortgage loan proceeds to or on behalf of the buyer, the registrant that assisted the buyer to obtain the mortgage loan is deemed to have completed the performance of the registrant's services for the buyer and owes no additional duties or obligations to the buyer with respect to the mortgage loan. However, nothing in this division shall be construed to limit or preclude the civil or criminal liability of a registrant for failing to comply with sections 1322.01 to 1322.12 of the Revised Code or any rule adopted under those sections, for failing to comply with any

provision of or duty arising under an agreement with a buyer or lender under sections 1322.01 to 1322.12 of the Revised Code, or for violating any other provision of state or federal law.

(G) A buyer injured by a violation of any of the sections specified in division (A)(1) of this section 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 initiated under section 1322.081 of the Revised Code and the recovery of damages for a violation of any of the sections specified in division (A)(1) of this section is based on the same acts or circumstances as the basis for recovery of damages in section 1322.081 of the Revised Code.

Sec. 1322.99. (A) Whoever violates division (A)(1) or (2) of section 1322.02, division (E) ~~or~~, (F), or (G) of section 1322.07, division (B)(1) or (2) of section 1322.071, or section 1322.08 of the Revised Code is guilty of a felony of the fifth degree.

(B) Whoever violates division (B)(3) of section 1322.071 of the Revised Code is guilty of a felony of the fourth degree.

(C) Whoever violates division (B) of section 1322.02 of the Revised Code is guilty of a misdemeanor of the first degree.

Sec. 1343.011. (A) As used in this section:

(1) "Discount points" means any charges, whether or not actually denominated as "discount points," that are paid by the seller or the buyer of residential real property to a residential mortgage lender or that are deducted and retained by a residential mortgage lender from the proceeds of the residential mortgage. "Discount points" does not include the costs associated with settlement services as defined in the "Real Estate Settlement Procedures Act of 1974," 88 Stat. 1724, 12 U.S.C. 2601, amendments thereto, reenactments thereof, enactments parallel thereto, or in substitution therefor, or regulations issued thereunder.

(2) "Residential mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing two or fewer residential units or on which two or fewer residential units are to be constructed and includes such an obligation on a residential condominium or cooperative unit.

(3) "Residential mortgage lender" means any person, bank, or savings and loan association that lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt. The term also includes the holder at any time of a residential mortgage obligation.

(B) Except residential mortgage loans described in division (B)(3) of section 1343.01 of the Revised Code, no residential mortgage lender shall

receive either directly or indirectly from a seller or buyer of real estate any discount points in excess of two per cent of the original principal amount of the residential mortgage. This division is not a limitation on discount points or other charges for purposes of section 501(b)(4) of the "Depository Institutions Deregulation and Monetary Control Act of 1980," 94 Stat. 161, 12 U.S.C.A. 1735f-7a.

~~(C) Residential (1) Except as provided in division (C)(2) of this section, residential mortgage obligations contracted for on or after November 4, 1975,~~ may be prepaid or refinanced without penalty at any time after five years from the execution date of the mortgage. Prior to such time a prepayment or refinancing penalty may be provided not in excess of one per cent of the original principal amount of the residential mortgage.

(2)(a) No penalty may be charged for the prepayment or refinancing of a residential mortgage obligation of less than seventy-five thousand dollars that is made or arranged by a mortgage broker, loan officer, or nonbank mortgage lender, as those terms are defined in section 1345.01 of the Revised Code, and that is secured by a mortgage on a borrower's real estate that is a first lien on the real estate.

(b) The amount specified in division (C)(2)(a) of this section shall be adjusted annually on the first day of January by the annual percentage change in the consumer price index for all urban consumers, midwest region, all items, as determined by the bureau of labor statistics of the United States department of labor or, if that index is no longer published, a generally available comparable index, as reported on the first day of June of the year preceding the adjustment. The department of commerce shall publish the adjusted amounts on its official web site.

Sec. 1345.01. As used in sections 1345.01 to 1345.13 of the Revised Code:

(A) "Consumer transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers, except for transactions in connection with residential mortgages between loan officers, mortgage brokers, or nonbank mortgage lenders and their customers; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

(B) "Person" includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or other legal entity.

(C) "Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer. If the consumer transaction is in connection with a residential mortgage, "supplier" does not include an assignee or purchaser of the loan for value, except as otherwise provided in section 1345.091 of the Revised Code. For purposes of this division, in a consumer transaction in connection with a residential mortgage, "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.

(D) "Consumer" means a person who engages in a consumer transaction with a supplier.

(E) "Knowledge" means actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

(F) "Natural gas service" means the sale of natural gas, exclusive of any distribution or ancillary service.

(G) "Public telecommunications service" means the transmission by electromagnetic or other means, other than by a telephone company as defined in section 4927.01 of the Revised Code, of signs, signals, writings, images, sounds, messages, or data originating in this state regardless of actual call routing. "Public telecommunications service" excludes a system, including its construction, maintenance, or operation, for the provision of telecommunications service, or any portion of such service, by any entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity, and not for resale, directly or indirectly; the provision of terminal equipment used to originate telecommunications service; broadcast transmission by radio, television, or satellite broadcast stations regulated by the federal government; or cable television service.

(H) "Loan officer" has the same meaning as in section 1322.01 of the Revised Code, except that it does not include an employee of a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; an employee of a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an employee of an affiliate that (1) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (2) is subject to examination, supervision, and regulation, including with respect

to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

(I) "Residential mortgage" or "mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing two or fewer residential units or on which two or fewer residential units are to be constructed and includes such an obligation on a residential condominium or cooperative unit.

(J) "Mortgage broker" has the same meaning as in section 1322.01 of the Revised Code, except that it does not include a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; an affiliate that (1) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (2) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration; or an employee of any such entity.

(K) "Nonbank mortgage lender" means any person that engages in a consumer transaction in connection with a residential mortgage, except for a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an affiliate that (1) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (2) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the board of governors of the federal reserve system, the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, or the national credit union administration.

(L) For purposes of divisions (H), (J), and (K) of this section:

(1) "Control" of another entity means ownership, control, or power to vote twenty-five per cent or more of the outstanding shares of any class of voting securities of the other entity, directly or indirectly or acting through one or more other persons.

(2) "Credit union service organization" means a CUSO as defined in 12 C.F.R. 702.2.

Sec. 1345.02. (A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have;

(2) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;

(3) That the subject of a consumer transaction is new, or unused, if it is not;

(4) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(5) That the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this section;

(6) That the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(7) That replacement or repair is needed, if it is not;

(8) That a specific price advantage exists, if it does not;

(9) That the supplier has a sponsorship, approval, or affiliation that the supplier does not have;

(10) That a consumer transaction involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false.

(C) In construing division (A) of this section, the court shall give due consideration and great weight to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45 (a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended.

(D) No supplier shall offer to a consumer or represent that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers, or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit is contingent upon an

event occurring after the consumer enters into the transaction.

(E)(1) No supplier, in connection with a consumer transaction involving natural gas service or public telecommunications service to a consumer in this state, shall request or submit, or cause to be requested or submitted, a change in the consumer's provider of natural gas service or public telecommunications service, without first obtaining, or causing to be obtained, the verified consent of the consumer. For the purpose of this division and with respect to public telecommunications service only, the procedures necessary for verifying the consent of a consumer shall be those prescribed by rule by the public utilities commission for public telecommunications service under division (D) of section 4905.72 of the Revised Code. Also, for the purpose of this division, the act, omission, or failure of any officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person.

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100(a)(3), of commercial mobile radio service providers from the verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications commission, division (E)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (E)(1) of this section shall apply to such a provider.

(3) The attorney general may initiate criminal proceedings for a prosecution under division (C) of section 1345.99 of the Revised Code by presenting evidence of criminal violations to the prosecuting attorney of any county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the attorney general may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries.

(F) Concerning a consumer transaction in connection with a residential mortgage, and without limiting the scope of division (A) or (B) of this section, the act of a supplier in doing either of the following is deceptive:

(1) Knowingly failing to provide disclosures required under state and federal law;

(2) Knowingly providing a disclosure that includes a material misrepresentation.

Sec. 1345.03. (A) No supplier shall commit an unconscionable act or

practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:

(1) Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect ~~his~~ the consumer's interests because of ~~his~~ the consumer's physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;

(2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers;

(3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;

(4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;

(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to ~~his~~ the consumer's detriment;

(7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier's refund policy.

(C) This section does not apply to a consumer transaction in connection with a residential mortgage.

Sec. 1345.031. (A) No supplier shall commit an unconscionable act or practice concerning a consumer transaction in connection with a residential mortgage. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) For purposes of division (A) of this section, the following acts or practices of a supplier in connection with such a transaction are unconscionable:

(1) Arranging for or making a mortgage loan that provides for an

interest rate applicable after default that is higher than the interest rate that applies before default, excluding rates of interest for judgments applicable to the mortgage loan under section 1343.02 or 1343.03 of the Revised Code and also excluding interest rate changes in a variable rate loan transaction otherwise consistent with the provisions of the loan documents;

(2) Engaging in a pattern or practice of providing consumer transactions to consumers based predominantly on the supplier's realization of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay the loan in accordance with its terms, provided that the supplier may use any reasonable method to determine a borrower's ability to repay;

(3) Making a consumer transaction that permits the creditor to demand repayment of the outstanding balance of a mortgage loan, in advance of the original maturity date unless the creditor does so in good faith due to the consumer's failure to abide by the material terms of the loan.

(4) Knowingly replacing, refinancing, or consolidating a zero interest rate or other low-rate mortgage loan made by a governmental or nonprofit lender with another loan unless the current holder of the loan consents in writing to the refinancing and the consumer presents written certification from a third-party nonprofit organization counselor approved by the United States department of housing and urban development or the superintendent of financial institutions that the consumer received counseling on the advisability of the loan transaction. For purposes of division (B)(4) of this section, a "low-rate mortgage loan" means a mortgage loan that carries a current interest rate two percentage points or more below the current yield on United States treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as applicable, shall be used, in lieu of the current rate, to determine whether a loan is a low-rate mortgage loan.

(5) Instructing the consumer to ignore the supplier's written information regarding the interest rate and dollar value of points because they would be lower for the consumer's consumer transaction;

(6) Recommending or encouraging a consumer to default on a mortgage or any consumer transaction or revolving credit loan agreement;

(7) Charging a late fee more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan and such deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for such default. If a late payment fee has been imposed once with respect to a particular late payment, no such fee

may be imposed with respect to any future payment that would have been timely and sufficient but for the previous default.

(8) Failing to disclose to the consumer at the closing of the consumer transaction that a consumer is not required to complete a consumer transaction merely because the consumer has received prior estimates of closing costs or has signed an application and should not close a loan transaction that contains different terms and conditions than those the consumer was promised;

(9) Arranging for or making a consumer transaction that includes terms under which more than two periodic payments required under the consumer transaction are consolidated and paid in advance from the loan proceeds provided to the consumer;

(10) Knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under Chapter 4763. of the Revised Code for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan;

(11) Financing, directly or indirectly, any credit, life, disability, or unemployment insurance premiums, any other life or health insurance premiums, or any debt collection agreement. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(12) Knowingly or intentionally engaging in the act or practice of "flipping" a mortgage loan. "Flipping" a mortgage loan is making a mortgage loan that refinances an existing mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances. This provision applies regardless of whether the interest rate, points, fees, and charges paid or payable by the consumer in connection with the refinancing exceed any thresholds specified in any section of the Revised Code.

(13) Knowingly taking advantage of the inability of the consumer to reasonably protect the consumer's interests because of the consumer's known physical or mental infirmities or illiteracy;

(14) Entering into the consumer transaction knowing there was no reasonable probability of payment of the obligation by the consumer;

(15) Attempting to enforce, by means not limited to a court action, a prepayment penalty in violation of division (C)(2) of section 1343.011 of the Revised Code;

(16) Engaging in an act or practice deemed unconscionable by rules

adopted by the attorney general pursuant to division (B)(2) of section 1345.05 of the Revised Code.

(C)(1) Any unconscionable arbitration clause, unconscionable clause requiring the consumer to pay the supplier's attorney's fees, or unconscionable liquidated damages clause included in a mortgage loan contract is unenforceable.

(2) No supplier shall do either of the following:

(a) Attempt to enforce, by means not limited to a court action, any clause described in division (C)(1) of this section;

(b) By referring to such a clause, attempt to induce the consumer to take any action desired by the supplier.

Sec. 1345.05. (A) The attorney general shall:

(1) Adopt, amend, and repeal procedural rules;

(2) Adopt as a rule a description of the organization of ~~his~~ the attorney general's office, stating the general courses and methods of operation of the section of the office of the attorney general, which is to administer Chapter 1345. of the Revised Code and methods whereby the public may obtain information or make submissions or requests, including a description of all forms and instructions used by that office;

(3) Make available for public inspection all rules and all other written statements of policy or interpretations adopted or used by ~~him~~ the attorney general in the discharge of ~~his~~ the attorney general's functions, together with all judgments, including supporting opinions, by courts of this state that determine the rights of the parties and concerning which appellate remedies have been exhausted, or lost by the expiration of the time for appeal, determining that specific acts or practices violate section 1345.02 ~~or~~, 1345.03, or 1345.031 of the Revised Code;

(4) Inform consumers and suppliers on a continuing basis of acts or practices ~~which that~~ violate Chapter 1345. of the Revised Code by, among other things, publishing an informational document describing acts and practices in connection with residential mortgages that are unfair, deceptive, or unconscionable, and by making that information available on the attorney general's official web site;

(5) Cooperate with state and local officials, officials of other states, and officials of the federal government in the administration of comparable statutes;

(6) Report annually on or before the first day of January to the governor and the general assembly on the operations of the attorney general in respect to Chapter 1345. of the Revised Code, and on the acts or practices occurring in this state that violate such chapter. The report shall include a statement of

investigatory and enforcement procedures and policies, of the number of investigations and enforcement proceedings instituted and of their disposition, and of other activities of the state and of other persons to promote the purposes of Chapter 1345. of the Revised Code.

(7) In carrying out ~~his~~ official duties, the attorney general shall not disclose publicly the identity of suppliers investigated or the facts developed in investigations unless these matters have become a matter of public record in enforcement proceedings, in public hearings conducted pursuant to division (B)(1) of this section, or the suppliers investigated have consented in writing to public disclosure.

(B) The attorney general may:

(1) Conduct research, make inquiries, hold public hearings, and publish studies relating to consumer transactions;

(2) Adopt, amend, and repeal substantive rules defining with reasonable specificity acts or practices that violate sections 1345.02 ~~and~~, 1345.03, and 1345.031 of the Revised Code. In adopting, amending, or repealing substantive rules defining acts or practices that violate section 1345.02 of the Revised Code, due consideration and great weight shall be given to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45 (a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended.

In adopting, amending, or repealing such rules concerning a consumer transaction in connection with a residential mortgage, the attorney general shall consult with the superintendent of financial institutions and shall give due consideration to state and federal statutes, regulations, administrative agency interpretations, and case law.

(C) In the conduct of public hearings authorized by this section, the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of relevant material. Upon failure of a person without lawful excuse to obey a subpoena or to produce relevant matter, the attorney general may apply to a court of common pleas for an order compelling compliance.

(D) The attorney general may request that an individual who refuses to testify or to produce relevant material on the ground that the testimony or matter may incriminate ~~him~~ the individual be ordered by the court to provide the testimony or matter. With the exception of a prosecution for perjury and an action for damages under section 1345.07 or 1345.09 of the Revised Code, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self incrimination to which ~~he~~ the individual is entitled by law, shall not be subjected to a

criminal proceeding on the basis of the testimony or matter discovered through that testimony or matter.

(E) Any person may petition the attorney general requesting the adoption, amendment, or repeal of a rule. The attorney general shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. Within sixty days of submission of a petition, the attorney general shall either deny the petition in writing, stating ~~his~~ the reasons for the denial, or initiate rule-making proceedings. There is no right to appeal from such denial of a petition.

(F) All rules shall be adopted subject to Chapter 119. of the Revised Code.

(G) The informational document published in accordance with division (A)(4) of this section shall be made available for distribution to consumers who are applying for a mortgage loan. An acknowledgement of receipt shall be retained by the lender, mortgage broker, and loan officer, as applicable, subject to review by the attorney general and the department of commerce.

Sec. 1345.07. (A) If the attorney general, by ~~his~~ the attorney general's own inquiries or as a result of complaints, has reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates this chapter, and that the action would be in the public interest, ~~he~~ the attorney general may bring any of the following:

(1) An action to obtain a declaratory judgment that the act or practice violates section 1345.02 ~~or~~, 1345.03, or 1345.031 of the Revised Code;

(2) An action, with notice as required by Civil Rule 65, to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain the act or practice. If the attorney general shows by a preponderance of the evidence that the supplier has violated or is violating section 1345.02 ~~or~~, 1345.03, or 1345.031 of the Revised Code, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain and prevent the act or practice. On motion of the attorney general, or on its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under this section, if the supplier received notice of the action. The civil penalties shall be paid as provided in division (G) of this section. Upon the commencement of an action under division (A)(2) of this section against a supplier who operates under a license, permit, certificate, commission, or other authorization issued by the supreme court or by a board, commission, department, division, or other agency of this state, the attorney general shall immediately notify the supreme court or agency that such an action has been

commenced against the supplier.

(3) A class action under Civil Rule 23, as amended, on behalf of consumers who have engaged in consumer transactions in this state for damage caused by:

(a) An act or practice enumerated in division (B) or (D) of section 1345.02 of the Revised Code;

(b) Violation of a rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based;

(c) An act or practice determined by a court of this state to violate section 1345.02 ~~or~~, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code.

(B) On motion of the attorney general and without bond, in the attorney general's action under this section, the court may make appropriate orders, including appointment of a referee or a receiver, for sequestration of assets, to reimburse consumers found to have been damaged, to carry out a transaction in accordance with a consumer's reasonable expectations, to strike or limit the application of unconscionable clauses of contracts so as to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a referee or receiver against the supplier.

(C) Any moneys or property recovered by the attorney general in an action under this section that cannot with due diligence within five years be restored by a referee to consumers shall be unclaimed funds reportable under Chapter 169. of the Revised Code.

(D) In addition to the other remedies provided in this section, if the violation is an act or practice that was declared to be unfair, deceptive, or unconscionable by a rule adopted pursuant to division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based occurred or an act or practice that was determined by a court of this state to violate section 1345.02 ~~or~~, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the court's determination was made available for public inspection pursuant to division (A)(3) of section 1345.05 of the Revised Code, the attorney general may request and the court may impose a civil penalty of not more than twenty-five thousand dollars against the supplier. The civil penalties shall be paid as provided in division (G) of this section.

(E) No action may be brought by the attorney general under this section to recover for a transaction more than two years after the occurrence of a

violation.

(F) If a court determines that provision has been made for reimbursement or other appropriate corrective action, insofar as practicable, with respect to all consumers damaged by a violation, or in any other appropriate case, the attorney general, with court approval, may terminate enforcement proceedings brought by ~~him~~ the attorney general upon acceptance of an assurance from the supplier of voluntary compliance with Chapter 1345. of the Revised Code, with respect to the alleged violation. The assurance shall be filed with the court and entered as a consent judgment. Except as provided in division (A) of section 1345.10 of the Revised Code, a consent judgment is not evidence of prior violation of such chapter. Disregard of the terms of a consent judgment entered upon an assurance shall be treated as a violation of an injunction issued under this section.

(G) Civil penalties ordered pursuant to divisions (A) and (D) of this section shall be paid as follows: one-fourth of the amount to the treasurer of the county in which the action is brought and three-fourths to the consumer protection enforcement fund created by section 1345.51 of the Revised Code.

(H) The remedies available to the attorney general under this section are cumulative and concurrent, and the exercise of one remedy by the attorney general does not preclude or require the exercise of any other remedy. The attorney general is not required to use any procedure set forth in section 1345.06 of the Revised Code prior to the exercise of any remedy set forth in this section.

Sec. 1345.09. For a violation of Chapter 1345. of the Revised Code, a consumer has a cause of action and is entitled to relief as follows:

(A) Where the violation was an act prohibited by section 1345.02 ~~or~~, 1345.03, or 1345.031 of the Revised Code, the consumer may, in an individual action, rescind the transaction or recover ~~his~~ the consumer's damages.

(B) Where the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B) (2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate section 1345.02 ~~or~~, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code, the consumer may rescind the transaction or recover, but not in a class action, three times the amount of ~~his~~ the consumer's actual

damages or two hundred dollars, whichever is greater, or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended.

(C) ~~In~~ (1) Except as otherwise provided in division (C)(2) of this section, in any action for rescission, revocation of the consumer transaction must occur within a reasonable time after the consumer discovers or should have discovered the ground for it and before any substantial change in condition of the subject of the consumer transaction.

(2) If a consumer transaction between a loan officer, mortgage broker, or nonbank mortgage lender and a customer is in connection with a residential mortgage, revocation of the consumer transaction in an action for rescission is only available to a consumer in an individual action, and shall occur for no reason other than one or more of the reasons set forth in the "Truth in Lending Act," 82 Stat. 146 (1968), 15 U.S.C. 1635, not later than the time limit within which the right of rescission under section 125(f) of the "Truth in Lending Act" expires.

(D) Any consumer may seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that violates this chapter.

(E) When a consumer commences an individual action for a declaratory judgment or an injunction or a class action under this section, the clerk of court shall immediately mail a copy of the complaint to the attorney general. Upon timely application, the attorney general may be permitted to intervene in any private action or appeal pending under this section. When a judgment under this section becomes final, the clerk of court shall mail a copy of the judgment including supporting opinions to the attorney general for inclusion in the public file maintained under division (A)(3) of section 1345.05 of the Revised Code.

(F) The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following apply:

(1) The consumer complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith;

(2) The supplier has knowingly committed an act or practice that violates this chapter.

Sec. 1345.091. No claim or defense under this chapter may be asserted by the attorney general or any consumer against an assignee or purchaser of a mortgage loan for value unless any one of the following applies:

(A) The violation was committed by the assignee or purchaser.

(B) The assignee or purchaser is affiliated by common control with the seller of the loan at the time of such assignment or purchase.

Sec. 1349.25. As used in sections 1349.25 to 1349.37 of the Revised Code:

(A) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(B) "Consumer" means a natural person to whom credit is offered or extended primarily for personal, family, or household purposes.

(C) "Consummation" means the time that a consumer becomes contractually obligated on a credit transaction.

(D) "Covered loan" means a consumer credit mortgage loan transaction, including an open end credit plan, that meets both of the following criteria:

(1) The loan involves property located within this state, is secured by the consumer's principal dwelling, and meets either of the following criteria:

(2)(1) The loan is considered a mortgage annual percentage rate at consummation of the transaction exceeds the amount established under section 152(a) of the "Home Ownership and Equity Protection Act of 1994," 108 Stat. 2190, 15 U.S.C.A. 1602(aa), as amended, and the regulations adopted thereunder by the federal reserve board, as amended.

(2) If the total loan amount is twenty-five thousand dollars or more, the total points and fees payable by the consumer at or before loan closing exceed five per cent of the total loan amount. If the total loan amount is less than twenty-five thousand dollars, the total points and fees payable by the consumer at or before loan closing exceed eight per cent of the total loan amount.

For purposes of division (D) of this section:

(a) "Points and fees" has the same meaning as in section 152(a) of the "Home Ownership and Equity Protection Act of 1994," 108 Stat. 2190, 15 U.S.C. 1602(aa), as amended, and the regulations adopted thereunder by the federal reserve board, as amended, and includes single premium credit insurance and all compensation paid directly or indirectly to a mortgage broker from any source. For transactions under an open end credit plan, "points and fees" includes fees paid for the ability to access the line of credit and fees paid in order to utilize the maximum amount of credit available.

"Points and fees" does not include fees paid to a federal or state government agency that insures payment of some portion of a home loan, including the federal housing administration and the United States department of veterans affairs, or an amount not to exceed one percentage point in indirect mortgage broker compensation paid by any source.

(b) "Total loan amount" means the principal of the loan minus points and fees that are included in the principal amount. For transactions under an open end credit plan, "total loan amount" shall be calculated by using the total line of credit allowed under the loan at closing.

(c) "Consumer credit mortgage loan transaction" does not include a residential mortgage transaction or a reverse mortgage transaction.

Nothing in division (D) of this section shall be construed to authorize a consumer or any other party to pay compensation to a creditor for services provided by the creditor in connection with a covered loan, or to prohibit a creditor from charging or receiving such compensation.

(E) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(F) "Creditor" has the same meaning as in section 152(c) of the "Home Ownership and Equity Protection Act of 1994," 108 Stat. 2190, 15 U.S.C.A. 1602(f), as amended, and the regulations adopted thereunder by the federal reserve board, as amended.

(G) "Person" means a natural person, partnership, association, trust, corporation, or any other legal entity.

(H) The terms "open end credit plan," "residential mortgage transaction," and "reverse mortgage transaction" have the same meanings as in section 152(a) of the "Home Ownership and Equity Protection Act of 1994," 108 Stat. 2190, 15 U.S.C. 1602, as amended, and the regulations adopted thereunder by the federal reserve board, as amended.

Sec. 1349.27. A creditor shall not do any of the following:

(A) Make a covered loan that includes any of the following:

(1) Terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due. For purposes of division (A)(1) of this section, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method.

Division (A)(1) of this section does not apply to a prepayment penalty imposed in accordance with section 129(c)(2) of the "Home Ownership and Equity Protection Act of 1994," 108 Stat. 2190, 15 U.S.C.A. 1639(c)(2), as amended, and the regulations adopted thereunder by the federal reserve board, as amended.

(2) Terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due;

(3) Terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds

provided to the consumer;

(4) Terms under which a rebate of interest arising from a loan acceleration due to default is calculated by a method less favorable than the actuarial method.

(B) Make a covered loan that provides for an interest rate applicable after default that is higher than the interest rate that applies before default;

(C) Make a covered loan having a term of less than five years that includes terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance. This division does not apply to any covered loan with a maturity of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(D) Engage in a pattern or practice of extending credit to consumers under covered loans based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment;

(E) Make a payment to a contractor under a home improvement contract from amounts extended as credit under a covered loan, except in either of the following ways:

(1) By an instrument that is payable to the consumer or jointly to the consumer and the contractor;

(2) At the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment.

(F) On or after October 1, 2002, make a covered loan that includes a demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in any of the following circumstances:

(1) There is fraud or material misrepresentation by the consumer in connection with the loan.

(2) The consumer fails to meet the repayment terms of the agreement for any outstanding balance.

(3) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan or any right of the creditor in that security.

(G)(1) Within one year after having made a covered loan, refinance a covered loan to the same borrower into another covered loan, unless the refinancing is in the consumer's interest. An assignee holding or servicing a covered loan shall not, for the remainder of the one-year period following

the date of origination of the covered loan, refinance any covered loan to the same consumer into another covered loan, unless the refinancing is in the consumer's interest.

A creditor or assignee shall not engage in acts or practices to evade division (G)(1) of this section, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement, whether or not the existing loan is satisfied and replaced by the new loan, and charging a fee.

(2) Division (G)(1) of this section shall apply on and after October 1, 2002.

(H) Make a covered loan without first obtaining a copy of the mortgage loan origination disclosure statement that was delivered to the buyer in accordance with division (A)(1) of section 1322.062 of the Revised Code;

(I) Finance, directly or indirectly, into a covered loan or finance to the same borrower within thirty days of a covered loan any credit life or credit disability insurance premiums sold in connection with the covered loan, provided that any credit life or credit disability insurance premiums calculated and paid on a monthly or other periodic basis shall not be considered financed by the person originating the loan. For purposes of this division, credit life or credit disability insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.

(J) Replace or consolidate a zero interest rate or other low-rate loan made by a governmental or nonprofit lender with a covered loan within the first ten years of the low-rate loan unless the current holder of the loan consents in writing to the refinancing. For purposes of this division, a "low-rate loan" means a loan that carries a current interest rate two percentage points or more below the current yield on United States treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as applicable, shall be used, in lieu of the current rate, to determine whether a loan is a low-rate loan.

(K) Make a covered loan if, at the time the loan was consummated, the consumer's total monthly debt, including amounts owed under the loan, exceed fifty per cent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means, unless the consumer submits both of the following:

(1) Verification that the consumer received prepurchase counseling from a counseling service that meets the criteria established by the superintendent of financial institutions under section 1349.271 of the Revised Code;

(2) A disclosure, signed by the consumer, that acknowledges the risk of entering into such a loan.

Sec. 1349.271. (A) The superintendent of financial institutions shall, in accordance with Chapter 119. of the Revised Code, adopt rules that establish criteria for purposes of qualifying counseling services that provide prepurchase counseling to consumers.

(B) Any not-for-profit credit counseling service approved by an agency of the federal government shall be deemed to meet the criteria established by the superintendent under this section.

Sec. 1349.31. (A)(1) No creditor shall willfully and knowingly fail to comply with section 1349.26 or 1349.27 of the Revised Code. For purposes of division (A)(1) of this section, "willfully and knowingly" has the same meaning as in section 112 of the "Truth in Lending Act," 82 Stat. 146 (1968), 15 U.S.C.A. 1611, as amended.

(2) Whoever violates division (A)(1) of this section is guilty of a felony of the fifth degree.

(B) The superintendent of financial institutions may directly bring an action to enjoin a violation of this section. The attorney general may directly bring an action against a mortgage broker, loan officer, or nonbank mortgage lender to enjoin a violation of this section with the same rights, privileges, and powers as those described in section 1345.06 of the Revised Code. The prosecuting attorney of the county in which the action may be brought may bring an action against a mortgage broker, loan officer, or nonbank mortgage lender to enjoin a violation of this section only if the prosecuting attorney first presents any 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.

For purposes of this division, "loan officer," "mortgage broker," and "nonbank mortgage lender" have the same meanings as in section 1345.01 of the Revised Code.

(C)(1) The superintendent of financial institutions may initiate criminal proceedings under this section by presenting any evidence of criminal violations to the prosecuting attorney of the county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the superintendent shall present any evidence of criminal violations to the attorney general,

who may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries. These powers of the attorney general shall be in addition to any other applicable powers of the attorney general.

(2) The prosecuting attorney of the county in which an alleged offense may be prosecuted may initiate criminal proceedings under this section.

(3) In order to initiate criminal proceedings under this section, the attorney general shall first present any evidence of criminal violations to the prosecuting attorney of the county in which the alleged offense may be prosecuted. If, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations, the attorney general may proceed in the prosecution with all the rights, privileges, and powers described in division (C)(1) of this section.

Sec. 1349.41. (A) As used in this section:

(1) "Consumer" means an individual to whom credit is offered or extended primarily for personal, family, or household purposes.

(2) "Lender" means a nonbank mortgage lender as defined in section 1345.01 of the Revised Code. "Lender" does not include a person that purchases or is assigned a loan or that functions solely as the servicer of a loan.

(3) "Mortgage" has the same meaning as in section 1322.01 of the Revised Code.

(B) A lender shall not engage in a transaction, practice, or course of business that is not in good faith or fair dealing, or that operates a fraud upon any person, in connection with the attempted or actual making, purchase, or sale of any mortgage loan.

(C) If a lender fails to comply with division (B) of this section, the affected consumer may recover damages of not less than all compensation paid directly or indirectly to the lender from any source, plus reasonable attorney's fees and court costs.

(D) The duty created by this section shall not be waived or modified.

Sec. 1349.43. (A) As used in this section, "loan officer," "mortgage broker," and "nonbank mortgage lender" have the same meanings as in section 1345.01 of the Revised Code.

(B) The department of commerce shall establish and maintain an electronic database accessible through the internet that contains information on all of the following:

(1) The enforcement actions taken by the superintendent of financial institutions for each violation of or failure to comply with any provision of

sections 1322.01 to 1322.12 of the Revised Code, upon final disposition of the action;

(2) The enforcement actions taken by the attorney general under Chapter 1345. of the Revised Code against loan officers, mortgage brokers, and nonbank mortgage lenders, upon final disposition of each action;

(3) All judgments by courts of this state, concerning which appellate remedies have been exhausted or lost by the expiration of the time for appeal, finding either of the following:

(a) A violation of any provision of sections 1322.01 to 1322.12 of the Revised Code;

(b) That specific acts or practices by a loan officer, mortgage broker, or nonbank mortgage lender violate section 1345.02, 1345.03, or 1345.031 of the Revised Code.

(C) The attorney general shall submit to the department, on the first day of each January, April, July, and October, a list of all enforcement actions and judgments described in divisions (B)(2) and (3)(b) of this section.

(D) The department may adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to implement this section.

(E) The electronic database maintained by the department in accordance with this section shall not include information that, pursuant to section 1322.061 of the Revised Code, is confidential.

Sec. 1349.44. (A) The superintendent of financial institutions shall report semiannually to the governor and the general assembly on the operations of the division of financial institutions with respect to the following:

(1) Enforcement actions instituted by the superintendent for a violation of or failure to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code, and their final dispositions;

(2) Suspensions, revocations, or refusals to issue or renew certificates of registration and licenses under sections 1322.01 to 1322.12 of the Revised Code;

(3) Outreach efforts of the office of consumer affairs to provide education regarding predatory lending, borrowing, and related financial topics.

(B) The information required under divisions (A)(1) and (2) of this section does not include information that, pursuant to section 1322.061 of the Revised Code, is confidential.

Sec. 1349.71. (A) There is hereby created a consumer finance education board, consisting of twelve members, appointed jointly by the governor, the speaker of the house of representatives, and the president of the senate with

the advice and consent of the house and senate. One member shall be appointed from, or as a representative of, each of the following:

- (1) The Ohio attorney general's office;
- (2) The department of commerce;
- (3) The Ohio housing finance agency;
- (4) Ohio minority advocacy groups;
- (5) The Ohio bankers league;
- (6) The Ohio mortgage bankers association;
- (7) The Ohio credit union league;
- (8) Ohio community bankers association;
- (9) The Ohio real estate industry;
- (10) The Ohio mortgage brokers association;
- (11) The financial services industry;
- (12) Consumer advocacy organizations.

(B) Geographically diverse representation of the state shall be considered in making appointments. Of the initial appointments to the board, four shall be for a term ending December 31, 2008, four shall be for a term ending December 31, 2009, and four shall be for a term ending December 31, 2010. Thereafter, terms of office are for three years, commencing on the first day of January and ending on the thirty-first day of December. Each member shall hold office from the date of the member's appointment until the end of the term for which the member is appointed. Prior to assuming the duties of office, each member shall subscribe to, and file with the secretary of state, the constitutional oath of office. Vacancies that occur on the board shall be filled in the manner prescribed for regular appointments to the board. A member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that predecessor's term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until sixty days have elapsed, whichever occurs first. No person shall serve as a member of the board for more than two consecutive terms. The governor may remove a member pursuant to section 3.04 of the Revised Code.

(C) Annually, upon the qualification of the members appointed in that year, the board shall organize by selecting from its members a chairperson. The board shall meet at least once each calendar quarter to conduct its business with the place of future meetings to be decided by a vote of its members. Each member shall be provided with written notice of the time and place of each board meeting at least ten days prior to the scheduled date of the meeting. A majority of the members of the board constitutes a

quorum to transact and vote on all business coming before the board.

(D)(1) The governor shall call the first meeting of the consumer finance education board. At that meeting, and annually thereafter, the board shall elect a chairperson for a one-year term and may elect members to other positions on the board as the board considers necessary or appropriate.

(2) Each member of the board shall receive an amount fixed pursuant to division (J) of section 124.15 of the Revised Code for each day employed in the discharge of the member's official duties, and the member's actual and necessary expenses incurred in the discharge of those duties.

(E) The board may obtain services from any state agency including but not limited to the department of commerce or its successor agency.

(F) The board shall assemble an advisory committee of representatives from the following organizations or groups for the purpose of receiving recommendations on policy, rules, and activities of the board:

- (1) The department of aging;
- (2) The department of rehabilitation and correction;
- (3) The department of development;
- (4) The department of job and family services;
- (5) The Ohio treasurer of state's office;
- (6) The county treasurers association of Ohio;
- (7) Ohio college professors;
- (8) Ohio university professors;
- (9) The Ohio board of regents;
- (10) The Ohio community development corporations association;
- (11) The Ohio council for economic education;
- (12) The Ohio state university extension service.

Sec. 1349.72. (A) In addition to any other duties imposed on the consumer finance education board by section 1349.71 of the Revised Code, the board shall:

(1) Analyze and investigate, on its own initiative, the policies and practices of state agencies, nonprofit entities, and businesses, inasmuch as such policies and practices address financial literacy, access by state residents to financial information, education, and resources, prevention of foreclosures and bankruptcies, and prepurchase and postpurchase counseling and education for homebuyers;

(2) Provide an annual report and consultation and recommendations to the governor, the general assembly, state agencies, nonprofit entities, and businesses based on the board's findings;

(3) Coordinate and provide resources and assistance to state agencies, nonprofit entities, and businesses in the furtherance of those entities' efforts

to improve financial literacy, access by state residents to financial information, education, and resources, prevention of foreclosures and bankruptcies, and prepurchase and postpurchase counseling and education for homebuyers.

(4) Provide financial assistance to Ohioans through grants funded through the consumer finance fund created under section 1321.21 of the Revised Code and utilize these same funds to provide grants to design, develop, and implement any other programs described in this section.

(5) Receive grants from the consumer finance fund for the implementation of this section.

(B) The board may assign and delegate the execution of its duties to smaller groups of its own members, which shall include committees specifically chartered to address all of the following issues:

(1) The needs of persons, ages eighteen to twenty-five, in the context of the objectives enumerated in division (A) of this section;

(2) The needs of persons, classified as needy, based on a household adjusted gross income equal to or less than two hundred per cent of the poverty level, as determined by the Ohio office of budget and management, or the earned income amount described in section thirty-two of the Internal Revenue Code of 1986, taking into account the size of the household, in the context of the objectives enumerated in division (A) of this section;

(3) The needs of persons, previously convicted of one or more felonies, in the context of the objectives enumerated in division (A) of this section;

(4) The needs of persons, characterized as vulnerable by reason of advanced age, disability, minority, or other demographic consideration, in the context of the objectives enumerated in division (A) of this section;

(5) Any other group or issue identified by the board as worthy of particular attention.

(C) The board shall create a pilot financial literacy and counseling program funded through the consumer finance fund, to be operated in the five counties with the highest mortgage foreclosure rates as of the effective date of this section, and completion of which shall be recommended by mortgage brokers and loan officers for any consumer seeking a mortgage loan with origination fees greater than five per cent. Before a mortgage broker permits a consumer to commit to such a loan, the broker shall notify the consumer that the loan may have attributes that are predatory. No person who offers education, advice, or counseling through the financial literacy and counseling program shall be held liable for any damages incurred from actions taken based on the education, advice, or counseling given.

Sec. 3953.23. (A) Every title insurance agent shall keep books of

account and record and vouchers pertaining to the business of title insurance in such manner that the title insurance company may readily ascertain from time to time whether the agent has complied with this chapter.

(B) A title insurance agent may engage in the business of handling escrows of real property transactions ~~directly connected with the business of title insurance~~, provided that the agent shall maintain a separate record of all receipts and disbursements of escrow funds and shall not commingle any such funds with the agent's own funds or with funds held by the agent in any other capacity; and if at any time the superintendent of insurance determines that an agent has failed to comply with any of the provisions of this section, the superintendent may revoke the license of the agent pursuant to section 3905.14 of the Revised Code, subject to review as provided for in Chapter 119. of the Revised Code. ~~All agents shall be covered by a fidelity bond in an amount and with a company satisfactory to the principal.~~

(C) All title insurance agents or agencies that handle escrows in real property transactions not involving the issuance of title insurance shall have coverage that protects the parties to such transactions against theft, misappropriation, fraud, or any other failure to properly disburse settlement, closing, or escrow funds. The superintendent shall adopt rules under Chapter 119. of the Revised Code setting forth the minimum requirements for such coverage, including, but not limited to, the minimum amounts, terms, and conditions of such coverage.

(D) The superintendent shall require every title insurance agent or agency and any subcontractors to maintain an errors and omissions policy, in any amount exceeding minimum limits established by the superintendent, that includes but is not limited to coverage for the agent's or agency's delegation of any agent or agency function. The superintendent shall adopt rules under Chapter 119. of the Revised Code setting forth the minimum requirements for that coverage, including but not limited to the minimum amounts, terms, and conditions of the coverage.

Sec. 3953.30. (A) As used in this section:

(1) "Residential mortgage loan" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing two or fewer residential units or on which two or fewer residential units are to be constructed and includes such an obligation on a residential condominium or cooperative unit.

(2) "Residential mortgage lender" means any person, including, but not limited to, banks, savings and loan associations, mortgage brokers, credit unions, or savings banks, that lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt.

(B) A title insurance agent issuing a lender's title insurance policy in conjunction with a residential mortgage loan made simultaneously with the purchase of all or part of the real property securing the loan, where no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the superintendent of insurance, to the mortgagor at the time the commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the residential mortgage lender, and that the policy does not provide title insurance protection to the mortgagor as the owner of the property being purchased. The notice shall explain what an owner's title insurance policy insures against and what possible exposures exist for the mortgagor that could be insured against through the purchase of an owner's title insurance policy. The notice shall state that the mortgagor may obtain an owner's title insurance policy protecting the mortgagor as the owner of the property, either at a specified cost or at an approximate cost if the proposed coverages or amount of insurance is not then known. The title insurance agent shall maintain a copy of the notice, signed by the mortgagor, in the relevant underwriting file for at least ten years after the effective date of the lender's title insurance policy.

Sec. 3953.32. (A) At the time of close with a title insurance company for issuance of a title insurance policy, the title insurance company or the title insurance agent shall offer closing or settlement protection to the lender, borrower, and seller of the property, and to any applicant for title insurance.

(B) The closing or settlement protection offered pursuant to this section shall indemnify any lender, borrower, seller, and applicant that has requested the protection, both individually and collectively, against the loss of settlement funds resulting from any of the following acts of the title insurance company's named title insurance agent or anyone acting on the agent's behalf:

(1) Theft, misappropriation, fraud, or any other failure to properly disburse settlement, closing, or escrow funds;

(2) Failure to comply with any applicable written closing instructions, when agreed to by the title insurance agent.

(C) The issuance of closing or settlement protection by a title insurance company pursuant to division (A) of this section is part of the business of title insurance for purposes of Chapter 3953. of the Revised Code.

(D) Except as provided in division (A) of this section, a title insurance company shall not offer or issue any coverage purporting to indemnify against a person's improper acts or omissions in connection with escrow,

settlement, or closing services.

(E) The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code as the superintendent considers necessary to carry out the purposes of this section, including, but not limited to, rules that detail the specific language that must be included in the written document offering closing or settlement protection as provided for in division (A) of this section.

Sec. 3953.33. (A) Every title insurance agent or agency that handles escrow, settlement, closing, or security deposit accounts shall have an annual independent review made of its escrow, settlement, closing, and security deposit accounts on a calendar-year basis within ninety days after the close of the previous fiscal year. The title insurance agent or agency shall provide proof of the annual review to each title insurance company that it represents. The superintendent of insurance shall promulgate rules under Chapter 119. of the Revised Code setting forth the minimum threshold level at which a review is required, the standards of the review, the minimum qualifications of the independent party conducting the review, and the form of the report that is required. The superintendent may also require title insurance agents or agencies to provide a copy of their annual review reports to the superintendent. The annual review required by this division does not apply to interest on lawyer's trust accounts established and maintained by an attorney pursuant to sections 4705.09 and 4705.10 of the Revised Code.

(B) Title insurance agents and agencies shall allow the superintendent and each and every title insurer that they represent reasonable access to all of their escrow, settlement, closing, and security deposit accounts and any and all supporting account information in order to ascertain the safety and security of the funds held by the title insurance agent or agency.

(C) Title insurance agents and agencies shall maintain sufficient records of their affairs, including their escrow operations and escrow trust accounts, so that the superintendent may adequately ensure that the title insurance agent or agency is in compliance of this chapter. Records kept pursuant to this section shall be kept for a period of not less than ten years following the transactions to which the records relate. The superintendent may prescribe the specific records and documents to be kept.

Sec. 3953.35. (A) No title insurance agent shall do any of the following in connection with a mortgage loan of seventy-five thousand dollars or less:

(1) Knowingly coerce or wrongfully instruct the consumer to enter into the loan;

(2) Knowingly fail to disclose to the consumer that the consumer does not have to close on the loan;

(3) Knowingly make a material misrepresentation to the consumer regarding the terms of the loan.

(B) A violation of this section is deemed an unfair and deceptive act or practice in violation of section 1345.02 of the Revised Code.

Sec. 4735.05. (A) The Ohio real estate commission is a part of the department of commerce for administrative purposes. The director of commerce is ex officio the executive officer of the commission, or the director may designate any employee of the department as superintendent of real estate and professional licensing to act as executive officer of the commission.

The commission and the real estate appraiser board created pursuant to section 4763.02 of the Revised Code shall each submit to the director a list of three persons whom the commission and the board consider qualified to be superintendent within sixty days after the office of superintendent becomes vacant. The director shall appoint a superintendent from the lists submitted by the commission and the board, and the superintendent shall serve at the pleasure of the director.

(B) The superintendent, except as otherwise provided, shall do all of the following in regard to this chapter:

- (1) Administer this chapter;
- (2) Issue all orders necessary to implement this chapter;
- (3) Investigate complaints concerning the violation of this chapter or the conduct of any licensee;

(4) Establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as in the judgment of the superintendent are appropriate to enforce this chapter. The investigators or auditors have the right to review and audit the business records of licensees and continuing education course providers during normal business hours.

(5) Appoint a hearing examiner for any proceeding involving disciplinary action under section 3123.47 or 4735.18 of the Revised Code;

- (6) Administer the real estate recovery fund.

(C) The superintendent may do all of the following:

(1) In connection with investigations and audits under division (B) of this section, subpoena witnesses as provided in section 4735.04 of the Revised Code;

(2) Apply to the appropriate court to enjoin any violation of this chapter. Upon a showing by the superintendent that any person has violated or is about to violate any provision of this chapter, the court shall grant an injunction, restraining order, or other appropriate order.

(3) Upon the death of a licensed broker or the revocation or suspension of the broker's license, if there is no other licensed broker within the business entity of the broker, appoint upon application by any interested party, or, in the case of a deceased broker, subject to the approval by the appropriate probate court, recommend the appointment of, an ancillary trustee who is qualified as determined by the superintendent to conclude the business transactions of the deceased, revoked, or suspended broker;

(4) In conjunction with the enforcement of this chapter, when the superintendent of real estate has reasonable cause to believe that an applicant or licensee has committed a criminal offense, the superintendent of real estate may request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check of the applicant or licensee. The superintendent of the bureau of criminal identification and investigation shall obtain information from the federal bureau of investigation as part of the criminal records check of the applicant or licensee. The superintendent of real estate may assess the applicant or licensee a fee equal to the fee assessed for the criminal records check.

(D) All information that is obtained by investigators and auditors performing investigations or conducting inspections, audits, and other inquiries pursuant to division (B)(4) of this section, from licensees, complainants, or other persons, and all reports, documents, and other work products that arise from that information and that are prepared by the investigators, auditors, or other personnel of the department, shall be held in confidence by the superintendent, the investigators and auditors, and other personnel of the department. Notwithstanding division (D) of section 2317.023 of the Revised Code, all information obtained by investigators or auditors from an informal mediation meeting held pursuant to section 4735.051 of the Revised Code, including but not limited to the agreement to mediate and the accommodation agreement, shall be held in confidence by the superintendent, investigators, auditors, and other personnel of the department.

(E) This section does not prevent the division of real estate and professional licensing from releasing information relating to licensees to the superintendent of financial institutions for purposes relating to the administration of sections 1322.01 to 1322.12 of the Revised Code, to the superintendent of insurance for purposes relating to the administration of Chapter 3953. of the Revised Code, to the attorney general, or to local law enforcement agencies and local prosecutors. Information released by the division pursuant to this section remains confidential.

Sec. 4763.03. (A) In addition to any other duties imposed on the real

estate appraiser board under this chapter, the board shall:

(1) Adopt rules, in accordance with Chapter 119. of the Revised Code, in furtherance of this chapter, including, but not limited to, all of the following:

(a) Defining, with respect to state-certified general real estate appraisers, state-certified residential real estate appraisers, and state-licensed residential real estate appraisers, the type of educational experience, appraisal experience, and other equivalent experience that satisfy the requirements of this chapter. The rules shall require that all appraisal experience performed after January 1, 1996, meet the uniform standards of professional practice established by the appraisal foundation.

(b) Establishing the examination specifications for state-certified general real estate appraisers, state-certified residential real estate appraisers, and state-licensed residential real estate appraisers;

(c) Relating to disciplinary proceedings conducted in accordance with section 4763.11 of the Revised Code, including rules governing the reinstatement of certificates, registrations, and licenses that have been suspended pursuant to those proceedings;

(d) Identifying any additional information to be included on the forms specified in division (C) of section 4763.12 of the Revised Code, provided that the rules shall not require any less information than is required in that division;

(e) Establishing the fees set forth in section 4763.09 of the Revised Code;

(f) Establishing the amount of the assessment required by division (A)(2) of section 4763.05 of the Revised Code. The board annually shall determine the amount due from each applicant for an initial certificate, registration, and license in an amount that will maintain the real estate appraiser recovery fund at the level specified in division (A) of section 4763.16 of the Revised Code. The board may, if the fund falls below that amount, require current certificate holders, registrants, and licensees to pay an additional assessment.

(g) Defining, with respect to state-registered real estate appraiser assistants, the educational and experience requirements of division (C)(1)(d) of section 4763.05 of the Revised Code;

(h) Establishing a real estate appraiser assistant program for the registration of real estate appraiser assistants.

(2) Provide or procure appropriate examination questions and answers for the examinations required by division (D) of section 4763.05 of the Revised Code, and establish the criteria for successful completion of those

examinations;

(3) Periodically review the standards for preparation and reporting of real estate appraisals provided in this chapter and adopt rules explaining and interpreting those standards;

(4) Hear appeals, pursuant to Chapter 119. of the Revised Code, from decisions and orders the superintendent of real estate issues pursuant to this chapter;

(5) Request the initiation by the superintendent of investigations of violations of this chapter or the rules adopted pursuant thereto, as the board determines appropriate;

(6) Determine the appropriate disciplinary actions to be taken against certificate holders, registrants, and licensees under this chapter as provided in section 4763.11 of the Revised Code.

(B) In addition to any other duties imposed on the superintendent of real estate under this chapter, the superintendent shall:

(1) Prescribe the form and content of all applications required by this chapter;

(2) Receive applications for certifications, registrations, and licenses and renewal thereof under this chapter and establish the procedures for processing, approving, and disapproving those applications;

(3) Retain records and all application materials submitted to the superintendent;

(4) Establish the time and place for conducting the examinations required by division (D) of section 4763.05 of the Revised Code;

(5) Issue certificates, registrations, and licenses and maintain a register of the names and addresses of all persons issued a certificate, registration, or license under this chapter;

(6) Perform any other functions and duties, including the employment of staff, necessary to administer this chapter;

(7) Administer this chapter;

(8) Issue all orders necessary to implement this chapter;

(9) Investigate complaints, upon the superintendent's own motion or upon receipt of a complaint or upon a request of the board, concerning any violation of this chapter or the rules adopted pursuant thereto or the conduct of any person holding a certificate, registration, or license issued pursuant to this chapter;

(10) Establish and maintain an investigation and audit section to investigate complaints and conduct inspections, audits, and other inquiries as in the judgment of the superintendent are appropriate to enforce this chapter. The investigators and auditors have the right to review and audit the

business records of certificate holders, registrants, and licensees during normal business hours. The superintendent may utilize the investigators and auditors employed pursuant to division (B)(4) of section 4735.05 of the Revised Code or currently licensed certificate holders or licensees to assist in performing the duties of this division.

(11) Appoint a referee or examiner for any proceeding involving the revocation or suspension of a certificate, registration, or license under section 3123.47 or 4763.11 of the Revised Code;

(12) Administer the real estate appraiser recovery fund;

(13) Conduct the examinations required by division (D) of section 4763.05 of the Revised Code at least four times per year.

(C) The superintendent may do all of the following:

(1) In connection with investigations and audits under division (B) of this section, subpoena witnesses as provided in section 4763.04 of the Revised Code;

(2) Apply to the appropriate court to enjoin any violation of this chapter. Upon a showing by the superintendent that any person has violated or is about to violate this chapter, the court shall grant an injunction, restraining order, or other appropriate relief, or any combination thereof.

(D) All information that is obtained by investigators and auditors performing investigations or conducting inspections, audits, and other inquiries pursuant to division (B)(10) of this section, from certificate holders, registrants, licensees, complainants, or other persons, and all reports, documents, and other work products that arise from that information and that are prepared by the investigators, auditors, or other personnel of the department of commerce, shall be held in confidence by the superintendent, the investigators and auditors, and other personnel of the department.

(E) This section does not prevent the division of real estate and professional licensing from releasing information relating to certificate holders, registrants, and licensees to the superintendent of financial institutions for purposes relating to the administration of sections 1322.01 to 1322.12 of the Revised Code, to the superintendent of insurance for purposes relating to the administration of Chapter 3953. of the Revised Code, to the attorney general, or to local law enforcement agencies and local prosecutors. Information released by the division pursuant to this section remains confidential.

Sec. 4763.05. (A)(1)(a) A person shall make application for an initial state-certified general real estate appraiser certificate, an initial state-certified residential real estate appraiser certificate, an initial state-licensed residential real estate appraiser license, or an initial

state-registered real estate appraiser assistant registration in writing to the superintendent of real estate on a form the superintendent prescribes. The application shall include the address of the applicant's principal place of business and all other addresses at which the applicant currently engages in the business of preparing real estate appraisals and the address of the applicant's current residence. The superintendent shall retain the applicant's current residence address in a separate record which shall not constitute a public record for purposes of section 149.03 of the Revised Code. The application shall indicate whether the applicant seeks certification as a general real estate appraiser or as a residential real estate appraiser, licensure as a residential real estate appraiser, or registration as a real estate appraiser assistant and be accompanied by the prescribed examination and certification, registration, or licensure fees set forth in section 4763.09 of the Revised Code. The application also shall include a fingerprint of the applicant; a pledge, signed by the applicant, that the applicant will comply with the standards set forth in this chapter; and a statement that the applicant understands the types of misconduct for which disciplinary proceedings may be initiated against the applicant pursuant to this chapter.

(b) Upon the filing of an application and payment of any examination and certification, registration, or licensure fees, the superintendent of real estate shall request the superintendent of the bureau of criminal identification and investigation, or a vendor approved by the bureau, to conduct a criminal records check based on the applicant's fingerprints in accordance with division (A)(11) of section 109.572 of the Revised Code. Notwithstanding division (J) of section 121.08 of the Revised Code, the superintendent of real estate shall request that criminal record information from the federal bureau of investigation be obtained as part of the criminal records check. Any fee required under division (C)(3) of section 109.572 of the Revised Code shall be paid by the applicant.

(2) For purposes of providing funding for the real estate appraiser recovery fund established by section 4763.16 of the Revised Code, the real estate appraiser board shall levy an assessment against each person issued an initial certificate, registration, or license and against current licensees, registrants, and certificate holders, as required by board rule. The assessment is in addition to the application and examination fees for initial applicants required by division (A)(1) of this section and the renewal fees required for current certificate holders, registrants, and licensees. The superintendent of real estate shall deposit the assessment into the state treasury to the credit of the real estate appraiser recovery fund. The assessment for initial certificate holders, registrants, and licensees shall be

paid prior to the issuance of a certificate, registration, or license, and for current certificate holders, registrants, and licensees, at the time of renewal.

(B) An applicant for an initial general real estate appraiser certificate shall possess at least thirty months of experience in real estate appraisal, or any equivalent experience the board prescribes. An applicant for a residential real estate appraiser certificate or residential real estate appraiser license shall possess at least two years of experience in real estate appraisal, or any equivalent experience the board prescribes. In addition to any other information required by the board, the applicant shall furnish, under oath, a detailed listing of the appraisal reports or file memoranda for each year for which experience is claimed and, upon request of the superintendent or the board, shall make available for examination a sample of the appraisal reports prepared by the applicant in the course of the applicant's practice.

(C)(1) Except as provided in division (C)(2) of this section, an applicant for an initial certificate, registration, or license shall be at least eighteen years of age, honest, truthful, and of good reputation and shall present satisfactory evidence to the superintendent of the following, as appropriate:

(a) If the applicant is seeking a state-certified general real estate appraiser certificate, that the applicant has successfully completed at least one hundred sixty-five classroom hours of courses in subjects related to real estate appraisal, including at least one course devoted exclusively to federal, state, and municipal fair housing law, presented by a nationally recognized appraisal organization, an institution of higher education, a career school registered by the state board of career colleges and schools, a state or federal commission or agency, or any other organization that represents the interests of financial institutions or real estate brokers, appraisers, or agents and that provides appraisal education, plus fifteen classroom hours related to standards of professional practice and the provisions of this chapter;

(b) If the applicant is seeking a state-certified residential real estate appraiser certificate, that the applicant has successfully completed at least one hundred five classroom hours of courses in subjects related to real estate appraisal, including at least one course devoted exclusively to federal, state, and municipal fair housing law, presented by a nationally recognized appraisal organization, an institution of higher education, a career school registered by the state board of career colleges and schools, or any other organization that represents the interests of financial institutions or real estate brokers, appraisers, or agents and that provides appraisal education, plus fifteen classroom hours related to standards of professional practice and the provisions of this chapter;

(c) If the applicant is seeking a state-licensed residential real estate

appraiser license, that the applicant has successfully completed at least seventy-five classroom hours of courses in subjects related to real estate appraisal, including at least one course devoted exclusively to federal, state, and municipal fair housing law, presented by a nationally recognized appraisal organization, an institution of higher education, a career school registered by the state board of career colleges and schools, a state or federal commission or agency, or any other organization that represents the interests of financial institutions or real estate brokers, appraisers, or agents and that provides appraisal education, plus fifteen classroom hours related to standards of professional practice and the provisions of this chapter;

(d) If the applicant is seeking a state-registered real estate appraiser assistant registration, that the applicant has successfully completed at least seventy-five classroom hours of courses in subjects related to real estate appraisal, including at least one course devoted exclusively to federal, state, and municipal fair housing law, presented by a nationally recognized appraisal organization, an institution of higher education, a career school registered by the state board of career colleges and schools, or any other organization that represents the interests of financial institutions or real estate brokers, appraisers, or agents, and that provides appraisal education that included at least fifteen classroom hours of instruction related to standards of professional practice and the requirements of this chapter and the rules adopted under this chapter.

(2) Each person who files an application for an initial certificate or license within one year of the date established by the board as the first date on which applications will be accepted under this section, which date shall be no later than September 1, 1990, and who, at the time of filing that application, does not satisfy the educational requirements for the certification or licensure sought of either division (C)(1)(a) or (b) of this section is exempt from those educational requirements for the term of the initial certification or licensure. In applying for a renewal certificate or license pursuant to section 4763.06 of the Revised Code, a certificate holder or licensee who was exempted from the educational requirements of division (C)(1)(a) or (b) of this section when applying for the initial certificate or license shall present satisfactory evidence to the superintendent that the certificate holder or licensee has completed the educational requirements for the certification or licensure to be renewed of one of those divisions before the renewal certificate or license may be issued.

(D) An applicant for an initial general real estate appraiser or residential real estate appraiser certificate or residential real estate appraiser license shall take and successfully complete a written examination in order to

qualify for the certificate or license. The examination shall require the applicant to demonstrate all of the following:

(1) Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and the economic concepts applicable to real estate;

(2) Understanding of the principles of land economics, real estate appraisal processes, and problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines;

(3) Understanding of the standards for the development and communication of real estate appraisals as provided in this chapter and the rules adopted thereunder;

(4) Knowledge of theories of depreciation, cost estimating, methods of capitalization, direct sales comparison, and the mathematics of real estate appraisal that are appropriate for the certification or licensure for which the applicant has applied;

(5) Knowledge of other principles and procedures as appropriate for the certification or license;

(6) Basic understanding of real estate law;

(7) Understanding of the types of misconduct for which disciplinary proceedings may be initiated against a certificate holder and licensee.

(E)(1) A nonresident, natural person of this state who has complied with this section may obtain a certificate, registration, or license. The board shall adopt rules relating to the certification, registration, and licensure of a nonresident applicant whose state of residence the board determines to have certification, registration, or licensure requirements that are substantially similar to those set forth in this chapter and the rules adopted thereunder.

(2) The board shall recognize on a temporary basis a certification or license issued in another state and shall register on a temporary basis an appraiser who is certified or licensed in another state if all of the following apply:

(a) The temporary registration is to perform an appraisal assignment that is part of a federally related transaction;

(b) The appraiser's business in this state is of a temporary nature;

(c) The appraiser registers with the board pursuant to this division.

An appraiser who is certified or licensed in another state shall register with the board for temporary practice before performing an appraisal assignment in this state in connection with a federally related transaction.

The board shall adopt rules relating to registration for the temporary recognition of certification and licensure of appraisers from another state. The registration for temporary recognition of certified or licensed appraisers

from another state shall not authorize completion of more than one appraisal assignment in this state. The board shall not issue more than two registrations for temporary practice to any one applicant in any calendar year.

(3) In addition to any other information required to be submitted with the nonresident applicant's or appraiser's application for a certificate, registration, license, or temporary recognition of a certificate or license, each nonresident applicant or appraiser shall submit a statement consenting to the service of process upon the nonresident applicant or appraiser by means of delivering that process to the secretary of state if, in an action against the applicant, certificate holder, registrant, or licensee arising from the applicant's, certificate holder's, registrant's, or licensee's activities as a certificate holder, registrant, or licensee, the plaintiff, in the exercise of due diligence, cannot effect personal service upon the applicant, certificate holder, registrant, or licensee.

(F) The superintendent shall not issue a certificate, registration, or license to, or recognize on a temporary basis an appraiser from another state that is a corporation, partnership, or association. This prohibition shall not be construed to prevent a certificate holder or licensee from signing an appraisal report on behalf of a corporation, partnership, or association.

(G) Every person licensed, registered, or certified under this chapter shall notify the superintendent, on a form provided by the superintendent, of a change in the address of the licensee's, registrant's, or certificate holder's principal place of business or residence within thirty days of the change. If a licensee's, registrant's, or certificate holder's license, registration, or certificate is revoked or not renewed, the licensee, registrant, or certificate holder immediately shall return the annual and any renewal certificate, registration, or license to the superintendent.

(H)(1) The superintendent shall not issue a certificate, registration, or license to any person, or recognize on a temporary basis an appraiser from another state, who does not meet applicable minimum criteria for state certification, registration, or licensure prescribed by federal law or rule.

(2) The superintendent shall not issue a general real estate appraiser certificate, residential real estate appraiser certificate, residential real estate appraiser license, or real estate appraiser assistant registration to any person who has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities, including a violation of an existing or former law of this state, any other state, or the United States that

substantially is equivalent to such an offense. However, if the applicant has pleaded guilty to or been convicted of such an offense, the superintendent shall not consider the offense if the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit such an offense again.

Sec. 4763.06. (A) A person licensed, registered, or certified under this chapter may obtain a renewal certificate, registration, or license by filing a renewal application with and paying the renewal fee set forth in section 4763.09 of the Revised Code and any amount assessed pursuant to division (A)(2) of section 4763.05 of the Revised Code to the superintendent of real estate. The renewal application shall include a statement, signed by the certificate holder, registrant, or licensee, that the certificate holder, registrant, or licensee has not, during the immediately preceding twelve-month period, been convicted of or pleaded guilty to any criminal offense described in division (H)(2) of section 4763.05 of the Revised Code. The certificate holder, registrant, or licensee shall file the renewal application at least thirty days, but no earlier than one hundred twenty days, prior to expiration of the certificate holder's, registrant's, or licensee's current certificate, registration, or license. A certificate holder or licensee who applies for a renewal certificate or license who, pursuant to division (C)(2) of section 4763.05 of the Revised Code, was exempted from the educational requirements of division (C)(1) of that section during the term of the initial certificate or license, as a condition of renewal, also shall present satisfactory evidence of having completed the appropriate educational requirements of either division (C)(1)(a) or (b) of that section since the effective date of the initial certificate or license.

(B) A certificate holder, registrant, or licensee who fails to renew a certificate, registration, or license prior to its expiration is ineligible to obtain a renewal certificate, registration, or license and shall comply with section 4763.05 of the Revised Code in order to regain ~~his~~ certification or licensure, except that a certificate holder, registrant, or licensee may, within three months after the expiration of the certificate holder's, registrant's, or licensee's certificate, registration, or license, renew the certificate, registration, or license without having to comply with section 4763.05 of the Revised Code by payment of all fees for renewal and payment of the late filing fee set forth in section 4763.09 of the Revised Code. A certificate holder, registrant, or licensee who applies for late renewal of the certificate holder's, registrant's, or licensee's certificate, registration, or license may

engage in all activities permitted by the certification, registration, or license being renewed for the three-month period following the certificate's, registration's, or license's normal expiration date.

Sec. 4763.12. (A) A person licensed or certified under this chapter may be retained or employed to act as a disinterested third party in rendering an unbiased valuation or analysis of real estate or to provide specialized services to facilitate the client or employer's objectives. An appraisal or appraisal report rendered by a certificate holder or licensee shall comply with this chapter. A certified appraisal or certified appraisal report represents to the public that it satisfies the standards set forth in this chapter.

(B) No certificate holder or licensee shall accept a fee for an appraisal assignment that is contingent, in whole or in part, upon the reporting of a predetermined estimate, analysis, or opinion or upon the opinion, conclusion, or valuation reached, or upon consequences resulting from the appraisal assignment. A certificate holder or licensee who enters into an agreement to provide specialized services may charge a fixed fee or a fee that is contingent upon the results achieved by the specialized services, provided that this fact is clearly stated in each oral report rendered pursuant to the agreement, and the existence of the contingent fee arrangement is clearly stated in a prominent place on each written report and in each letter of transmittal and certification statement made by the certificate holder or licensee within that report.

(C) Every written report rendered by a certificate holder or licensee in conjunction with an appraisal assignment or specialized service performed shall include the following information:

- (1) The name of the certificate holder or licensee;
- (2) The class of certification or licensure held by and the certification or licensure number of the certificate holder or licensee;
- (3) Whether the appraisal or specialized service is performed within the scope of the certificate holder's or licensee's certification or licensure;
- (4) Whether the appraisal or specialized service is provided by a certificate holder or licensee as a disinterested and unbiased third party or as a person on an interested and biased basis or as an interested third party on a contingent fee basis;
- (5) The signature of the person preparing and reporting the appraisal or specialized service.

If the certificate holder or licensee provides an oral real estate appraisal or specialized service, the certificate holder or licensee shall send, within seven days of providing the oral report, a form to the client containing the appropriate information specified in this division and the rules adopted

pursuant ~~thereto~~ to this division.

(D) Nothing in this chapter shall be construed as requiring a certificate holder or licensee to provide a client with a copy of any writing prepared in support of an oral appraisal report except as provided in division (C) of this section or as agreed to between the certificate holder or licensee and the certificate holder's or licensee's client.

(E) No person, directly or indirectly, shall knowingly compensate, instruct, induce, coerce, or intimidate, or attempt to compensate, instruct, induce, coerce, or intimidate, a certificate holder or licensee for the purpose of corrupting or improperly influencing the independent judgment of the certificate holder or licensee with respect to the value of the dwelling offered as security for repayment of a mortgage loan.

Sec. 4763.13. (A) In engaging in appraisal activities, a person certified, registered, or licensed under this chapter shall comply with the applicable standards prescribed by the board of governors of the federal reserve system, the federal deposit insurance corporation, the comptroller of the currency, the office of thrift supervision, the national credit union administration, and the resolution trust corporation in connection with federally related transactions under the jurisdiction of the applicable agency or instrumentality. A certificate holder, registrant, and licensee also shall comply with the uniform standards of professional appraisal practice, as adopted by the appraisal standards board of the appraisal foundation and such other standards adopted by the real estate appraiser board, to the extent that those standards do not conflict with applicable federal standards in connection with a particular federally related transaction.

(B) The terms "state-licensed residential real estate appraiser," "state-certified residential real estate appraiser," "state-certified general real estate appraiser," and "state-registered real estate appraiser assistant" shall be used to refer only to those persons who have been issued the applicable certificate, registration, or license or renewal certificate, registration, or license pursuant to this chapter. None of these terms shall be used following or in connection with the name or signature of a partnership, corporation, or association or in a manner that could be interpreted as referring to a person other than the person to whom the certificate, registration, or license has been issued. No person shall fail to comply with this division.

(C) No person, other than a certificate holder, a registrant, or a licensee, shall assume or use a title, designation, or abbreviation that is likely to create the impression that the person possesses certification, registration, or licensure under this chapter, provided that professional designations containing the term "certified appraiser" and being used on or before July

26, 1989, shall not be construed as being misleading under this division. No person other than a person certified or licensed under this chapter shall describe or refer to an appraisal or other evaluation of real estate located in this state as being certified.

(D) The terms "state-certified or state-licensed real estate appraisal report," "state-certified or state-licensed appraisal report," or "state-certified or state-licensed appraisal" shall be used to refer only to those real estate appraisals conducted by a certificate holder or licensee as a disinterested and unbiased third party provided that the certificate holder or licensee provides certification with the appraisal and provided further that if a licensee is providing the appraisal, such terms shall only be used if the licensee is acting within the scope of the licensee's license. No person shall fail to comply with this division.

(E) Nothing in this chapter shall preclude a partnership, corporation, or association which employs or retains the services of a certificate holder or licensee to advertise that the partnership, corporation, or association offers state-certified or state-licensed appraisals through a certificate holder or licensee if the advertisement clearly states such fact in accordance with guidelines for such advertisements established by rule of the real estate appraiser board.

(F) ~~Nothing~~ Except as otherwise provided in section 4763.19 of the Revised Code, nothing in this chapter shall preclude a person who is not licensed or certified under this chapter from appraising real estate for compensation.

Sec. 4763.19. (A) Subject to division (B) of this section, no person shall perform a real estate appraisal for a mortgage loan if the person is not licensed or certified under this chapter to do the appraisal.

(B) Division (A) of this section does not apply to a lender using a market analysis or price opinion, an internal valuation analysis, or an automated valuation model or report based on an automated valuation model, and any person providing that report to the lender, in performing a valuation for purposes of a loan application, as long as the lender does both of the following:

(1) Gives the consumer loan applicant a copy of any written market analysis or price opinion or valuation report based on an automated valuation model;

(2) Includes a disclaimer on the consumer's copy specifying that the valuation used for purposes of the application was obtained from a market analysis or price opinion or automated valuation model report and not from a person licensed or certified under this chapter.

Sec. 4763.99. (A) Whoever violates division (B) of section 4763.12 or, division (B), (C), or (D) of section 4763.13, or section 4763.19 of the Revised Code is guilty of a misdemeanor of the first degree.

(B) Whoever violates division (E) of section 4763.12 of the Revised Code is guilty of a felony of the fifth degree.

SECTION 2. That existing sections 109.572, 1321.57, 1322.02, 1322.03, 1322.031, 1322.04, 1322.041, 1322.051, 1322.06, 1322.061, 1322.062, 1322.07, 1322.10, 1322.11, 1322.99, 1343.011, 1345.01, 1345.02, 1345.03, 1345.05, 1345.07, 1345.09, 1349.25, 1349.27, 1349.31, 3953.23, 4735.05, 4763.03, 4763.05, 4763.06, 4763.12, 4763.13, and 4763.99 of the Revised Code are hereby repealed.

SECTION 3. (A) Sections 1 and 2 of this act shall take effect January 1, 2007.

(B) It is the intent of the General Assembly that the Attorney General, upon this act's effective date, begin the rulemaking process for purposes of division (B) of section 1345.031 of the Revised Code, as enacted by this act. Rules so adopted by the Attorney General shall not, however, take effect until January 1, 2007.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____