

**As Passed by the Senate**

**129th General Assembly  
Regular Session  
2011-2012**

**Sub. S. B. No. 333**

**Senator Obhof**

**Cosponsors: Senators Beagle, Coley, LaRose, Seitz, Bacon, Peterson,  
Brown, Balderson, Burke, Hughes, Jones, Lehner, Manning, Wagoner,  
Widener**

—

**A B I L L**

To amend sections 1321.52 and 1322.02 and to enact 1  
sections 1321.537, 1321.538, 1322.042, and 2  
1322.043 of the Revised Code to authorize the 3  
Superintendent of Financial Institutions to issue 4  
a temporary mortgage loan originator license or 5  
temporary loan originator license to an 6  
out-of-state applicant who meets certain criteria. 7

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1321.52 and 1322.02 be amended and 8  
sections 1321.537, 1321.538, 1322.042, and 1322.043 of the Revised 9  
Code be enacted to read as follows: 10

**Sec. 1321.52.** (A)(1) No person, on that person's own behalf 11  
or on behalf of any other person, shall do any of the following 12  
without having first obtained a certificate of registration from 13  
the division of financial institutions: 14

(a) Advertise, solicit, or hold out that the person is 15  
engaged in the business of making residential mortgage loans 16  
secured by a mortgage on a borrower's real estate which is other 17

than a first lien on the real estate; 18

(b) Engage in the business of lending or collecting the 19  
person's own or another person's money, credit, or choses in 20  
action for non-first lien residential mortgage loans; 21

(c) Employ or compensate mortgage loan originators licensed 22  
or who should be licensed under sections 1321.51 to 1321.60 of the 23  
Revised Code to conduct the business of making residential 24  
mortgage loans; 25

(d) Make loans in this state of the type set forth in 26  
division (C) of this section that are unsecured or are secured by 27  
other than real property, which loans are for more than five 28  
thousand dollars at a rate of interest greater than permitted by 29  
section 1343.01 or other specific provisions of the Revised Code. 30

(2) Each person issued a certificate of registration or 31  
license is subject to all the rules prescribed under sections 32  
1321.51 to 1321.60 of the Revised Code. 33

(B)(1) All loans made to persons who at the time are 34  
residents of this state are considered as made within this state 35  
and subject to the laws of this state, regardless of any statement 36  
in the contract or note to the contrary, except as follows: 37

(a) If the loan is primarily secured by a lien on real 38  
property in another state and is arranged by a mortgage loan 39  
originator licensed by that state, the borrower may by choice of 40  
law designate that the transaction be governed by the law where 41  
the real property is located if the other state has consumer 42  
protection laws covering the borrower that are applicable to the 43  
transaction. 44

(b) If the loan is for the purpose of purchasing goods 45  
acquired by the borrower when the borrower is outside of this 46  
state, the loan may be governed by the laws of the other state. 47

(2) Nothing in division (B)(1) of this section prevents a choice of law or requires registration or licensure of persons outside of this state in a transaction involving the solicitation of residents of this state to obtain non-real estate secured loans that require the borrowers to physically visit a lender's out-of-state office to apply for and obtain the disbursement of loan funds.

(C) A registrant may make unsecured loans, loans secured by a mortgage on a borrower's real estate which is a first lien or other than a first lien on the real estate, loans secured by other than real estate, and loans secured by any combination of mortgages and security interests, on terms and conditions provided by sections 1321.51 to 1321.60 of the Revised Code.

(D)(1) If a lender that is subject to sections 1321.51 to 1321.60 of the Revised Code makes a loan in violation of division (A)(1) of this section, the lender has no right to collect, receive, or retain any interest or charges on that loan.

(2) If a registrant applies to the division for a renewal of the registrant's certificate after the date required by division (A)(7) of section 1321.53 of the Revised Code, but prior to the first day of February of that year, and the division approves the application, division (D)(1) of this section does not apply with respect to any loan made by the registrant while the registrant's certificate was expired.

(3) If a person's registration under sections 1321.51 to 1321.60 of the Revised Code terminates due to nonrenewal or otherwise but the person continues to engage in the business of collecting or servicing non-first lien residential mortgage loans in violation of division (A)(1) of this section, the superintendent of financial institutions may take administrative action, including action on any subsequent application for a certificate of registration. In addition, no late fee, bad check

charge except as incurred, charge related to default or cost to realize on its security interest, or prepayment penalty on non-first lien residential mortgage loans shall be collected or retained by a person who is in violation of division (A)(1)(b) of this section for the period of time in which the person was in violation. Nothing in division (D)(3) of this section prevents or otherwise precludes any other actions or penalties provided by law or modifies a defense of holder in due course that a subsequent purchaser servicing the residential mortgage loan may raise.

(E)(1) No individual shall engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license pursuant to section 1321.532 of the Revised Code from the division of financial institutions. A mortgage loan originator shall be employed or associated with a registrant or entity exempt from registration under sections 1321.51 to 1321.60 of the Revised Code, but shall not be employed by or associated with more than one registrant or exempt entity at any one time.

(2) An individual acting under the individual's authority as a registered mortgage loan originator shall not be required to be licensed under division (E)(1) of this section.

(3) An individual who holds a valid temporary mortgage loan originator license issued pursuant to section 1321.537 of the Revised Code may engage in the business of a mortgage loan originator in accordance with sections 1321.51 to 1321.60 of the Revised Code during the term of the temporary license.

(F)(1) Each licensee shall register with, and maintain a valid unique identifier issued by, the nationwide mortgage licensing system and registry.

(2) No person shall use a licensee's unique identifier for any purpose other than as set forth in the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810,

12 U.S.C. 5101. 111

(G)(1) If a person that is subject to sections 1321.51 to 112  
1321.60 of the Revised Code makes a loan in violation of division 113  
(A)(1)(d) of this section and subsequently sells or assigns that 114  
loan, the person is liable to the borrower for any interest paid 115  
on that loan to the holder or assignee in excess of the rate that 116  
would be applicable in the absence of sections 1321.51 to 1321.60 117  
of the Revised Code, in addition to any interest or charges paid 118  
on that loan to the unauthorized lender as provided by division 119  
(D)(1) of this section. 120

(2) If a person that is subject to sections 1321.51 to 121  
1321.60 of the Revised Code makes a residential mortgage loan in 122  
violation of division (A)(1)(b) or (c) of this section and 123  
subsequently sells or assigns that loan, the lender is liable to 124  
the borrower for any interest paid on that loan to the holder or 125  
assignee in excess of the rate set forth in division (B)(4) of 126  
section 1343.01 of the Revised Code, in addition to any interest 127  
or charges paid on that loan to the unauthorized lender as 128  
provided by division (D)(1) of this section. 129

**Sec. 1321.537.** (A) As used in this section: 130

(1) "Out-of-state mortgage loan originator" means an 131  
individual to whom both of the following apply: 132

(a) The individual holds a valid mortgage loan originator 133  
license, or comparable authority, issued pursuant to the law of 134  
any other state of the United States. 135

(b) The individual is registered, fingerprinted, and 136  
maintains a unique identifier through the nationwide mortgage 137  
licensing system and registry. 138

(2) "Sponsor" means a registrant or entity described in 139  
division (D) of section 1321.53 of the Revised Code that employs 140

or is associated with an applicant for a temporary mortgage loan 141  
originator license and, during the term of the applicant's 142  
temporary license, covers the applicant under its corporate surety 143  
bond or requires the applicant to obtain and maintain a corporate 144  
surety bond. 145

(B) The superintendent of financial institutions may, in 146  
accordance with this section, issue to an out-of-state mortgage 147  
loan originator a temporary mortgage loan originator license that 148  
enables the licensee to engage in the business of a mortgage loan 149  
originator while the individual completes the requirements 150  
necessary to meet the conditions set forth in section 1321.532 of 151  
the Revised Code for a mortgage loan originator license. A 152  
temporary mortgage loan originator license shall be valid for a 153  
term of not more than one hundred twenty days from the date of 154  
issuance. A temporary mortgage loan originator license may not be 155  
renewed. 156

(C) An application for a temporary mortgage loan originator 157  
license shall be in writing, under oath, and in a form that meets 158  
the requirements of the nationwide mortgage licensing system and 159  
registry. The application shall be accompanied by a nonrefundable 160  
application fee, the amount of which shall be determined by the 161  
superintendent in rule, and a certification that, as of the date 162  
of application, the applicant meets the following conditions: 163

(1) The applicant has at least two years of experience in the 164  
field of residential mortgage lending in the five years 165  
immediately preceding the date of application for the temporary 166  
mortgage loan originator license. 167

(2) The applicant has not previously applied for a temporary 168  
mortgage loan originator license in this state. 169

(3) The applicant has not had a mortgage loan originator 170  
license, or comparable authority, revoked in any governmental 171

jurisdiction. For purposes of division (C)(3) of this section, a 172  
subsequent formal vacation of such a revocation shall not be 173  
considered a revocation. 174

(4) The applicant has not been convicted of, or pleaded 175  
guilty or nolo contendere to, any of the following in a domestic, 176  
foreign, or military court: 177

(a) During the seven-year period immediately preceding the 178  
date of application, a misdemeanor involving theft or any felony; 179

(b) At any time prior to the date of application, a felony 180  
involving an act of fraud, dishonesty, a breach of trust, theft, 181  
or money laundering. 182

For purposes of division (C)(4) of this section, any 183  
conviction for which the applicant has received a pardon shall not 184  
be considered a conviction. 185

(D) The superintendent shall issue a temporary mortgage loan 186  
originator license to the applicant if the superintendent finds 187  
that all of the following conditions are met: 188

(1) The application is accompanied by the application fee and 189  
the certification described in division (C) of this section. 190

(2) The applicant is registered, fingerprinted, and has a 191  
valid unique identifier through the nationwide mortgage licensing 192  
system and registry as of the date of application. 193

(3) The applicant has authorized the nationwide mortgage 194  
licensing system and registry to obtain a credit report for 195  
submission to the superintendent. 196

(4) The applicant has a sponsor that certifies employment of, 197  
or association with, the applicant and has signed the application. 198

(E) The sponsor of a temporary licensee shall have an 199  
affirmative duty to supervise the conduct of each temporary 200  
mortgage loan originator in the same manner as is required of its 201

other licensees. If the temporary licensee's employment or 202  
association with the sponsor is terminated, the sponsor shall 203  
notify the division of financial institutions of the termination 204  
through the nationwide mortgage licensing system and registry. 205  
Upon the division's receipt of the notice, the sponsor shall no 206  
longer be held responsible for the conduct of the temporary 207  
licensee. 208

(F) The superintendent may, in accordance with Chapter 119. 209  
of the Revised Code, adopt rules necessary for the implementation 210  
and operation of this section. 211

Sec. 1321.538. If the "Secure and Fair Enforcement for 212  
Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101, 213  
as amended, is modified after the effective date of this section, 214  
or any regulation, statement, or position is adopted under that 215  
act, to permit states to issue a temporary mortgage loan 216  
originator license to a registered mortgage loan originator, the 217  
superintendent shall, in accordance with section 111.15 of the 218  
Revised Code, adopt rules the superintendent considers necessary 219  
and appropriate to issue a temporary license to a registered 220  
mortgage loan originator. 221

Sec. 1322.02. (A)(1) No person, on the person's own behalf or 222  
on behalf of any other person, shall act as a mortgage broker 223  
without first having obtained a certificate of registration from 224  
the superintendent of financial institutions for every office to 225  
be maintained by the person for the transaction of business as a 226  
mortgage broker in this state. A registrant shall maintain an 227  
office location in this state for the transaction of business as a 228  
mortgage broker in this state. 229

(2) No person shall act or hold that person's self out as a 230  
mortgage broker under the authority or name of a registrant or 231



person exempt from sections 1322.01 to 1322.12 of the Revised Code 232  
without first having obtained a certificate of registration from 233  
the superintendent for every office to be maintained by the person 234  
for the transaction of business as a mortgage broker in this 235  
state. 236

(B)(1) No individual shall act as a loan originator without 237  
first having obtained a license from the superintendent. A loan 238  
originator shall be employed by or associated with a mortgage 239  
broker or any person or entity listed in division (G)(2) of 240  
section 1322.01 of the Revised Code, but shall not be employed by 241  
or associated with more than one mortgage broker or person or 242  
entity at any one time. 243

(2) An individual acting under the individual's authority as 244  
a registered loan originator shall not be required to be licensed 245  
under division (B)(1) of this section. 246

(3) An individual who holds a valid temporary loan originator 247  
license issued pursuant to section 1322.042 of the Revised Code 248  
may engage in the business of a loan originator in accordance with 249  
sections 1322.01 to 1322.12 of the Revised Code during the term of 250  
the temporary license. 251

(C)(1) No person acting as a mortgage broker or loan 252  
originator shall fail to register with, and maintain a valid 253  
unique identifier issued by, the nationwide mortgage licensing 254  
system and registry. 255

(2) No person shall use a mortgage broker's or loan 256  
originator's unique identifier for any purpose other than as set 257  
forth in the "Secure and Fair Enforcement for Mortgage Licensing 258  
Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101. 259

**Sec. 1322.042. (A) As used in this section:** 260

(1) "Out-of-state loan originator" means an individual to 261

whom both of the following apply: 262

(a) The individual holds a valid loan originator license, or 263  
comparable authority, issued pursuant to the law of any other 264  
state of the United States. 265

(b) The individual is registered, fingerprinted, and 266  
maintains a unique identifier through the nationwide mortgage 267  
licensing system and registry. 268

(2) "Sponsor" means a registrant or entity described in 269  
division (G)(2) of section 1322.01 of the Revised Code that 270  
employs or is associated with an applicant for a temporary loan 271  
originator license and, during the term of the applicant's 272  
temporary license, covers the applicant under its corporate surety 273  
bond or requires the applicant to obtain and maintain a corporate 274  
surety bond. 275

(B) The superintendent of financial institutions may, in 276  
accordance with this section, issue to an out-of-state loan 277  
originator a temporary loan originator license that enables the 278  
licensee to engage in the business of a loan originator while the 279  
individual completes the requirements necessary to meet the 280  
conditions set forth in section 1322.041 of the Revised Code for a 281  
loan originator license. A temporary loan originator license shall 282  
be valid for a term of not more than one hundred twenty days from 283  
the date of issuance. A temporary loan originator license may not 284  
be renewed. 285

(C) An application for a temporary loan originator license 286  
shall be in writing, under oath, and in a form that meets the 287  
requirements of the nationwide mortgage licensing system and 288  
registry. The application shall be accompanied by a nonrefundable 289  
application fee, the amount of which shall be determined by the 290  
superintendent in rule, and a certification that, as of the date 291  
of application, the applicant meets the following conditions: 292

(1) The applicant has at least two years of experience in the field of residential mortgage lending in the five years immediately preceding the date of application for the temporary loan originator license. 293  
294  
295  
296

(2) The applicant has not previously applied for a temporary loan originator license in this state. 297  
298

(3) The applicant has not had a loan originator license, or comparable authority, revoked in any governmental jurisdiction. For purposes of division (C)(3) of this section, a subsequent formal vacation of such a revocation shall not be considered a revocation. 299  
300  
301  
302  
303

(4) The applicant has not been convicted of, or pleaded guilty or nolo contendere to, any of the following in a domestic, foreign, or military court: 304  
305  
306

(a) During the seven-year period immediately preceding the date of application, a misdemeanor involving theft or any felony; 307  
308

(b) At any time prior to the date of application, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering. 309  
310  
311

For purposes of division (C)(4) of this section, any conviction for which the applicant has received a pardon shall not be considered a conviction. 312  
313  
314

(D) The superintendent shall issue a temporary loan originator license to the applicant if the superintendent finds that all of the following conditions are met: 315  
316  
317

(1) The application is accompanied by the application fee and the certification described in division (C) of this section. 318  
319

(2) The applicant is registered, fingerprinted, and has a valid unique identifier through the nationwide mortgage licensing system and registry as of the date of application. 320  
321  
322

(3) The applicant has authorized the nationwide mortgage licensing system and registry to obtain a credit report for submission to the superintendent. 323  
324  
325

(4) The applicant has a sponsor that certifies employment of, or association with, the applicant and has signed the application. 326  
327

(E) The sponsor of a temporary licensee shall have an affirmative duty to supervise the conduct of each temporary loan originator in the same manner as is required of its other licensees. If the temporary licensee's employment or association with the sponsor is terminated, the sponsor shall notify the division of financial institutions of the termination through the nationwide mortgage licensing system and registry. Upon the division's receipt of the notice, the sponsor shall no longer be held responsible for the conduct of the temporary licensee. 328  
329  
330  
331  
332  
333  
334  
335  
336

(F) The superintendent may, in accordance with Chapter 119. of the Revised Code, adopt rules necessary for the implementation and operation of this section. 337  
338  
339

**Sec. 1322.043.** If the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101, as amended, is modified after the effective date of this section, or any regulation, statement, or position is adopted under that act, to permit states to issue a temporary loan originator license to a registered loan originator, the superintendent shall, in accordance with section 111.15 of the Revised Code, adopt rules the superintendent considers necessary and appropriate to issue a temporary license to a registered loan originator. 340  
341  
342  
343  
344  
345  
346  
347  
348

**Section 2.** That existing sections 1321.52 and 1322.02 of the Revised Code are hereby repealed. 349  
350