

HOUSE No. 4047

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 24, 2007.

The committee on Financial Services to whom was referred the petition (accompanied by bill, House, No 1028) of Ronald Mariano relative to mortgage lenders and mortgage brokers, reports recommending that the accompanying bill (house, No. 4047), ought to pass.

For the committee,

RONALD MARIANO.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE SUPERVISION OF THE MORTGAGE INDUSTRY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 10 of the General Laws is hereby
2 amended by inserting after section 35CC, inserted by section 2 of
3 chapter 130 of the acts of 2005, the following section:—

4 Section 35DD. (a) There shall be established upon the books of
5 the commonwealth a separate fund to be known as the Division of
6 Banks Trust Fund, to be expended, without prior appropriation, by
7 the division of banks. The fund shall consist of 100 per cent of the
8 increased fee revenue collected pursuant to subsection (b) as well
9 as the branch office location fees collected pursuant to section 5
10 of chapter 255E. Funds from the account shall be expended solely
11 in connection with supervising the mortgage industry and shall
12 not be subject to fringe and indirect cost charges. The division
13 may incur expenses, and the comptroller may certify for payment
14 for amounts in anticipation of expected receipts; but no expendi-
15 ture shall be made from the fund which shall cause the fund to be
16 in deficit at the close of each fiscal year. All moneys deposited in
17 the fund that are unexpended at the end of the fiscal year and that
18 total not more than 20 per cent of the division's expenditures for
19 the previous fiscal year shall not revert to the General Fund.

20 (b) Notwithstanding any general or special law to the contrary,
21 the secretary of administration and finance shall promulgate regu-
22 lations to increase the fees for obtaining or renewing a mortgage
23 broker license, a mortgage lender license, and the mortgage broker
24 and lender examination fees by an amount sufficient to cover the
25 costs of supervising the mortgage industry.

1 SECTION 2. Section 1 of chapter 255E of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended by

3 inserting after the definition of “Mortgage loan” the following
4 definition:—

5 “Multi-state licensing system”, a system involving one or more
6 states, the District of Columbia, or the Commonwealth of Puerto
7 Rico for the sharing of regulatory information and the licensing
8 and application processes, by electronic or other means, for mort-
9 gage lenders and mortgage brokers.

1 SECTION 3. Said chapter 255E is hereby further amended by
2 striking out section 3, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 3. The application for a license shall be in the form
5 prescribed by the commissioner and shall contain the name and
6 address or addresses where the business of the applicant is located
7 and if the applicant is a partnership, association, corporation, or
8 other form of business organization, the names and addresses of
9 each member, director, and principal officer thereof or any indi-
10 vidual acting in the capacity of the manager of an office location.
11 Such application shall also include a description of the activities
12 of the applicant, in such detail and for such periods as the com-
13 missioner may require, as well as such further information as the
14 commissioner may require. The commissioner may require a
15 background investigation of each applicant for a mortgage broker
16 or mortgage lender license by means of fingerprint checks by the
17 Criminal History Systems Board pursuant to section 172 of
18 section 6, and the Federal Bureau of Investigation for state and
19 national criminal history record checks. If the applicant is a part-
20 nership, association, corporation or other form of business organi-
21 zation, the commissioner may require a background investigation
22 by means of fingerprint checks on each member, director, or prin-
23 cipal officer of such applicant or any individual acting in the
24 capacity of the manager of an office location. The information
25 obtained thereby may be used by the commissioner to determine
26 the applicant’s eligibility for licensing under this chapter. Receipt
27 of criminal history record information by a private entity is pro-
28 hibited. Each application for a license shall be accompanied by an
29 investigation fee. Investigation and license fees shall be deter-
30 mined annually by the commissioner of administration under the
31 provisions of section 3B of chapter 7.

32 The commissioner is authorized to participate in a multi-state
33 licensing system for mortgage lenders and mortgage brokers. The
34 commissioner may, by regulation, establish requirements for par-
35 ticipation by an applicant in a multi-state licensing system which
36 may vary from the provisions set out in sections 3 and 5. The
37 applicant shall pay any additional fee for a license or other partici-
38 pation in such multi-state licensing system.

39 Except for the division, no person shall be authorized to obtain
40 information from the multi-state licensing system that they could
41 not otherwise have obtained under the General Laws. No infor-
42 mation obtained from the multi-state licensing system shall be
43 admissible as evidence in, or used to initiate, a civil proceeding in
44 the commonwealth unless such information would otherwise be
45 admissible in such proceedings under the General Laws.

46 The commissioner shall ensure that the multi-state licensing
47 system adopts appropriate privacy, data security and security
48 breach notification policies. The commissioner shall make avail-
49 able within thirty days upon written request a copy of the contract
50 between the division and the multi-state licensing system that sat-
51 isfies the provisions of this section.

52 Nothing in this section shall authorize the commissioner to
53 require any person exempt from licensure under section 2 or
54 employees or agents of any such exempt person to obtain a
55 license.

1 SECTION 4. Section 5 of said chapter 255E, as so appearing,
2 is hereby amended by striking out the first six sentences and
3 inserting in place thereof the following four sentences:— Each
4 license shall state the address at which the business is to be con-
5 ducted and shall state the name of the licensee. If a licensee
6 intends to carry on such business at any place other than the
7 address on the license, he shall so notify the commissioner, in
8 writing, at least thirty days prior thereto, and he shall pay a fee for
9 such additional location at a reasonable cost as determined by the
10 commissioner. Such notice shall contain the address of any such
11 additional location and such other information as the commis-
12 sioner may require; provided, however, that any such business
13 shall at all times be conducted in the name of the licensee as it

14 appears on the license. Such license shall not be transferable or
15 assignable and shall expire annually on a date determined by the
16 commissioner.

1 SECTION 5. Section 8 of said chapter 255E, as so appearing,
2 is hereby amended by striking out the first sentence and inserting
3 in place thereof the following sentence:—

4 Each licensee shall annually, on or before a date determined by
5 the commissioner, file a report with the commissioner containing
6 such information as said commissioner may require concerning
7 the business and operations conducted by the licensee in the
8 commonwealth during the preceding calendar year.

1 SECTION 6. Said section 8 of said chapter 255E, as so
2 appearing, is hereby further amended by adding the following
3 paragraph:—

4 The commissioner shall preserve a full record of each such
5 examination of a licensee including a statement of its condition.
6 All records of investigation and reports of examination by the
7 commissioner, including work papers, information derived from
8 such reports or response to such reports, and any copies thereof in
9 the possession of any licensee under the supervision of the com-
10 missioner, shall be confidential and privileged communications
11 shall not be subject to subpoena and shall not be made public. For
12 the purpose of this paragraph, records of investigation and reports
13 of examinations shall include records of investigation and reports
14 of examinations conducted by any bank regulatory agency of the
15 federal government and any other state, and of any foreign gov-
16 ernment which are considered confidential by such agency or for-
17 eign government and which are in possession of the
18 commissioner. In any proceeding before a court, the court may
19 issue a protective order in appropriate circumstances to protect the
20 confidentiality of any such record and other than any such record
21 on file with the court or filed in connection with the court pro-
22 ceeding be sealed and that the public be excluded from any
23 portion of the proceeding at which any such record is disclosed.
24 Copies of such reports of examination shall be furnished to a
25 licensee for its use only and shall not be exhibited to any other
26 person, organization or agency without prior written approval by

27 the commissioner. The commissioner may, in his discretion,
28 furnish to regulatory agencies of the federal government, of other
29 states, or of foreign countries and any law enforcement agency,
30 such information, reports, inspections and statements relating to
31 the licensees under his supervision as he deems appropriate.

1 SECTION 7. The commissioner of banks shall file with the
2 joint committee on financial services an annual report, including
3 financial statements, of the conference of state bank supervisors
4 state regulatory registry, limited liability company relative to the
5 multi-state licensing system. The commissioner shall file said
6 report within ten days of receipt from the conference of state bank
7 supervisors state regulatory registry, limited liability company.
8 Said report shall be initially filed following the first full fiscal
9 year after the effective date of this act and thereafter for the 2
10 following years.