

South Carolina General Assembly
118th Session, 2009-2010

A287, R272, H3790

STATUS INFORMATION

General Bill

Sponsors: Rep. Sandifer

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Companion/Similar bill(s): 673

Introduced in the House on March 26, 2009

Introduced in the Senate on May 5, 2009

Last Amended on May 20, 2010

Passed by the General Assembly on May 26, 2010

Governor's Action: June 7, 2010, Vetoed

Legislative veto action(s): Veto overridden

Summary: Licensing of Mortgage Brokers Act; Mortgage Lending Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/26/2009	House	Introduced and read first time HJ-6
3/26/2009	House	Referred to Committee on Labor, Commerce and Industry HJ-7
4/22/2009	House	Committee report: Favorable with amendment Labor, Commerce and Industry HJ-4
4/28/2009	House	Debate adjourned until Wednesday, April 29, 2009 HJ-24
4/29/2009	House	Debate adjourned HJ-29
4/29/2009	House	Requests for debate-Rep(s). Kennedy, Ott, Hosey, Hart, JH Neal, Clyburn, JE Smith, HB Brown, Jefferson, Clemmons, Crawford, Lowe, Sandifer, Daning, RL Brown, Hutto, Brantley, and King HJ-101
4/30/2009	House	Requests for debate removed-Rep(s). Kennedy, JH Neal, Hosey, King, Ott, Clyburn, Hart, Jefferson, RL Brown HJ-50
4/30/2009	House	Amended HJ-89
4/30/2009	House	Read second time HJ-153
4/30/2009	House	Roll call Yeas-97 Nays-1 HJ-153
4/30/2009	House	Unanimous consent for third reading on next legislative day HJ-153
5/1/2009	House	Read third time and sent to Senate HJ-4
5/5/2009	Senate	Introduced and read first time SJ-10
5/5/2009	Senate	Referred to Committee on Banking and Insurance SJ-10
5/5/2010	Senate	Polled out of committee Banking and Insurance SJ-11
5/5/2010	Senate	Committee report: Favorable with amendment Banking and Insurance SJ-11
5/20/2010	Senate	Committee Amendment Adopted SJ-17
5/20/2010	Senate	Amended SJ-17
5/20/2010	Senate	Read second time SJ-17
5/24/2010		Scrivener's error corrected
5/25/2010	Senate	Read third time and returned to House with amendments SJ-26
5/26/2010	House	Concurred in Senate amendment and enrolled HJ-48
5/26/2010	House	Roll call Yeas-96 Nays-0 HJ-48
6/1/2010		Ratified R 272
6/7/2010		Vetoed by Governor

6/15/2010 House Veto overridden by originating body Yeas-103 Nays-4 [HJ-120](#)
6/29/2010 Senate Veto overridden Yeas-27 Nays-10 [SJ-90](#)
7/19/2010 Effective date 06/29/10
7/21/2010 Act No. 287

VERSIONS OF THIS BILL

[3/26/2009](#)

[4/22/2009](#)

[4/30/2009](#)

[5/5/2010](#)

[5/20/2010](#)

[5/24/2010](#)

(A287, R272, H3790)

AN ACT TO AMEND SECTION 40-58-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CERTAIN DEFINITIONS PERTAINING TO THE LICENSURE OF MORTGAGE BROKERS, SO AS TO DEFINE A “QUALIFIED LOAN ORIGINATOR”; TO AMEND SECTION 40-58-50, AS AMENDED, RELATING TO QUALIFIED LOAN ORIGINATORS, SO AS TO REQUIRE LICENSURE FOR A QUALIFIED LOAN ORIGINATOR, TO PROVIDE APPLICATIONS PROCEDURES AND QUALIFICATION REQUIREMENTS; TO AMEND SECTION 37-3-501, AS AMENDED, RELATING TO THE DEFINITION OF A SUPERVISED LOAN, SO AS TO PROVIDE EXCEPTIONS TO THIS DEFINITION; AND TO AMEND SECTION 37-3-503, RELATING TO A LICENSE TO MAKE A SUPERVISED LOAN, SO AS TO PROHIBIT A PERSON LICENSED TO MAKE A SUPERVISED LOAN FROM ENGAGING IN CERTAIN CLOSED-END CREDIT TRANSACTIONS, AND TO PROVIDE GRADUATED PENALTIES FOR VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

**Definitions pertaining to the licensing of mortgage brokers;
“Qualified Loan Originator” defined**

SECTION 1. Section 40-58-20 of the 1976 Code, as last amended by Act 67 of 2009, is further amended by adding at the end:

“(40) ‘Qualified loan originator’ means a natural person who acts as a loan originator exclusively for a mortgage broker licensee and who is not an employee of the mortgage broker. Unless otherwise indicated, a qualified loan originator is subject to the requirements of a loan originator under this chapter.”

Licensure required for qualified loan originator; application procedures, requirements

SECTION 2. Section 40-58-50 of the 1976 Code, as last amended by Act 67 of 2009, is further amended by adding at the end:

“(E)(1) A person may not act as a qualified loan originator in this State without first being licensed with the administrator. It is unlawful

for a person to employ, to compensate, or to appoint as its agent a qualified loan originator unless the qualified loan originator is licensed pursuant to this chapter. The license of a qualified loan originator is not effective during any period when that person is not supervised pursuant to an exclusive written contract by a mortgage broker licensed pursuant to this chapter. When a qualified loan originator ceases to be supervised by a licensed mortgage broker, the qualified loan originator and the mortgage broker shall notify promptly the administrator in writing. The mortgage broker's notice must include a statement of the specific reason or reasons for the termination of the qualified loan originator's exclusive written contract. The reason for termination is confidential information and may not be released to the public.

(2) An application to become licensed as a qualified loan originator must be in writing, under oath, and in a form prescribed by the administrator. The application must contain any and all information in Sections 40-58-50(A) and (C) and be accompanied by a nonrefundable annual licensing fee of one hundred dollars. Additionally, the applicant must:

(a) meet the requirements of Section 40-58-50(C);

(b) meet the surety bond requirement of a mortgage broker pursuant to Section 40-58-40. Principal on the surety is the qualified loan originator;

(c) act as an agent for a single mortgage broker licensee, who:

(i) is responsible for supervising the qualified loan originator as required by this chapter and in accordance with a plan of supervision approved by the administrator in the administrator's sole discretion;

(ii) signs the license application of the applicant; and

(iii) is jointly and severally liable with the qualified loan originator for any claims arising from the qualified loan originator's mortgage origination activities.

(3) Pursuant to Section 40-58-110, a qualified loan originator license expires on December thirty-first and must be renewed pursuant to that section and accompanied by a nonrefundable annual licensing fee of one hundred dollars.

(4) Each office location of a qualified loan originator is a branch office of the supervising mortgage broker licensee, and must be operated as any other branch office pursuant to this chapter.

(5) In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a qualified loan originator to:

(a) be compensated on a basis that is dependent upon the interest rate, fees, or other terms of the loan originated, provided that

this section does not prohibit compensation based on the principal balance of the loan;

(b) offer loans other than fixed-term, fixed-rate, fully amortizing mortgage loans originated for a single mortgage lender with substantially equal monthly mortgage payments and without a prepayment penalty;

(c) handle borrower or other third-party funds in connection with the origination of mortgage loans.

(6) Unless otherwise indicated, a qualified loan originator is subject to the requirements of a loan originator under this chapter.”

Interpretation, application, and amendment of provisions of act conflicting with SAFE Act

SECTION 3. Any provision of this act deemed by HUD to conflict with its interpretation of the SAFE Act, provided for in Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289, must be interpreted, applied, or amended in such a way so as to comply with HUD’s interpretation of the SAFE Act. If any provision of this act cannot be interpreted, applied, or amended in such a way so as to comply with the SAFE Act, that provision must be severed from the act and shall not affect the remainder of the act’s compliance with the SAFE Act. The regulating authority shall adopt emergency regulations or take other actions necessary to ensure compliance with the SAFE Act and the regulating authority’s continued jurisdiction over and supervision of the mortgage business in this State.

Definition of a supervised loan; exceptions added

SECTION 4.A. Section 37-3-501(1) of the 1976 Code, as last amended by Act 67 of 2009, is further amended to read:

“(1) ‘Supervised loan’ means a consumer loan in which the rate of the loan finance charge exceeds twelve percent per year as determined according to the provisions on the loan finance charge for consumer loans (Section 37-3-201). A supervised loan does not include:

(a) a mortgage loan as defined in Section 37-22-110(30); or

(b) a closed-end credit transaction, with an original repayment term of less than one hundred twenty days, unsecured by any interest in the consumer’s personal property or secured by personal property, excluding motor vehicles that are free of any other liens or encumbrances, that does not have a market value that reasonably secures the amount of the loan, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer's deposit account by electronic fund transfer or a remotely created check or remotely created consumer item as defined in Section 36-3-103(16).

The provisions of subitem (b) do not apply to credit unions, bank holding companies, banks, or financial institutions insured by the Federal Deposit Insurance Corporation.”

License to make supervised loan; additional requirements imposed, penalties for violations added

B. Section 37-3-503(7) of the 1976 Code is amended to read:

“(7)(a) A licensee may conduct the business of making supervised loans only at or from any place of business for which he holds a license and not under any other name than that in the license. Sales or leases made pursuant to a lender credit card do not violate this subsection.

(b)(1) A person licensed to make supervised loans may not make or enter into a closed-end credit transaction, with an original repayment term of less than one hundred twenty days, unsecured by any interest in the consumer's personal property or secured by personal property, excluding motor vehicles that are free of any other liens or encumbrances, that does not have a market value that reasonably secures the amount of the loan, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer's deposit account by electronic fund transfer or a remotely created check or remotely created consumer item as defined in Section 36-3-103(16).

(2) The board shall impose the following penalties for violation of this item:

- (a) a fine of five hundred dollars for the first violation;
- (b) a fine of one thousand dollars for the second violation;
- (c) permanent revocation of license for the third violation.

The board may not revoke a license issued pursuant to this chapter unless the licensee has been given notice and opportunity for hearing in accordance with the Administrative Procedures Act.

(3) In addition to the penalties required in item (2), the board or the court may order and impose civil penalties upon a person subject to the provisions of this article for violations of this article or its regulations in an amount not to exceed one thousand dollars for each violation. The board also may order repayment of unlawful or excessive fees charged to customers.

(c) The provisions of subsection (b)(1) do not apply to credit unions, bank holding companies, banks, or financial institutions insured by the Federal Deposit Insurance Corporation.

(d) A person licensed to make supervised loans that makes supervised loans secured by a motor vehicle that have an original repayment term of less than one hundred twenty days must comply with the provisions contained in Section 37-3-413.”

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 1st day of June, 2010.

Vetoed by the Governor -- 6/7/2010.

Veto overridden by House -- 6/15/2010.

Veto overridden by Senate -- 6/29/2010.
