

HOUSE BILL 4116

By Odom

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 13, relative to the licensing or registration of mortgage lenders, mortgage loan brokers, mortgage loan servicers and mortgage loan originators.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-13-104(3) is amended by deleting the language “twenty-five percent (25%)” and substituting instead the language “ten percent (10%)”.

SECTION 2. Tennessee Code Annotated, Section 45-13-104 is amended by adding the following language as new subsections:

(c) All applicants for a license under § 45-13-103(a) shall have successfully completed an educational training course approved by the commissioner. The commissioner may require that each individual who is a director, officer, partner, managing member, managing principal or branch manager, as well as any individual who directs the affairs of the applicant, establishes policy, or possesses control of the applicant as defined in § 45-13-102(5), shall have successfully completed an educational training course approved by the commissioner. This subsection shall not become effective until the commissioner has approved at least one (1) educational training course. This subsection shall not apply to renewals of existing licenses.

(d) The commissioner is authorized to require an applicant for a license under § 45-13-103(a) to consent to a criminal history records check and to provide with the application a set of the applicant’s fingerprints in a form acceptable to the commissioner. The commissioner may require such consent and fingerprints from any

individual who is a director, officer, partner, managing member, managing principal, branch manager or ultimate equitable owner of ten percent (10%) or more of the applicant, as well as from any individual who directs the affairs of the company or establishes policy. Refusal of any person to consent to a criminal history records check or to provide fingerprints as allowed by this subsection constitutes grounds for the commissioner to deny licensure to the applicant.

(e) Any criminal history records check conducted under subsection (d) shall be conducted by the Tennessee bureau of investigation and/or the federal bureau of investigation, and the results of the criminal history records check shall be forwarded to the commissioner. The reasonable costs incurred in conducting such criminal history records check shall be paid by the applicant to the commissioner, in addition to any other investigative fees required by this section.

SECTION 3. Tennessee Code Annotated, Section 45-13-105(a) is amended by deleting the section in its entirety and substituting instead the following language:

(a) Upon the filing of a complete application for a license and the payment of the fee, the commissioner shall investigate each application filed pursuant to § 45-13-103(a) to the extent deemed necessary. The commissioner shall deliver a license to the applicant if the commissioner finds that the applicant:

(1) Has the financial responsibility, experience and character to warrant the belief that the business of the applicant will be operated lawfully and within the purposes of this chapter;

(2) That the applicant has a tangible net worth (tangible assets less liabilities) of not less than twenty-five thousand dollars (\$25,000), and an additional tangible net worth of twenty-five thousand dollars (\$25,000) for each additional location within Tennessee specified in the application; and

(3) Such applicant has paid a license fee of five hundred dollars (\$500).

If the commissioner does not so find, the commissioner shall deny such application and notify the applicant of the denial, give notice of the grounds for the denial and notify the applicant of the right to request a hearing. The commissioner shall approve or deny every application for license hereunder within ninety (90) days from the date a complete application is filed, and the failure to respond within the ninety-day period shall constitute approval of the license. The commissioner shall notify the applicant of the date when the application is deemed complete. Nothing contained herein shall prohibit an applicant from modifying or amending the application in order to seek approval by the commissioner. If the commissioner denies any application and if the applicant requests a hearing, the commissioner shall conduct such hearing under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5; provided, that such applicant has requested such hearing in writing within thirty (30) days following the denial of the application by the commissioner. At such hearing, the burden of proving that the applicant is entitled to a license is on the applicant.

SECTION 4. Tennessee Code Annotated, Section 45-13-105(c) is amended by adding the following language as new subdivisions:

(3) As a condition of license and registration renewal, the commissioner may adopt rules to require continuing education of licensees and registrants under this chapter for the purpose of enhancing the professional competence and professional responsibility of all licensees and registrants. The rules may include criteria for:

(A) The content of continuing education courses;

(B) Accreditation of continuing education sponsors and programs;

(C) Accreditation of audiovisual programs;

(D) Computation of credit;

(E) Special cases and exemptions;

(F) General compliance procedures; and

(G) Sanctions for noncompliance.

(4) Annual continuing professional education requirements shall be determined by the commissioner.

(5) The commissioner may require education providers of the educational training course required under the provisions of § 45-13-104(c), § 45-13-119(c) and § 45-13-126(c), and the continuing education courses required under this section, to file information regarding the contents and materials of proposed courses with the commissioner for review and approval. The commissioner may set fees for the initial and continuing review of courses for which credit hours will be granted.

SECTION 5. Tennessee Code Annotated, Section 45-13-119(a) is amended by replacing the word “registrant” with the word “person.”

SECTION 6. Tennessee Code Annotated, Section 45-13-119(b) is amended by deleting that subsection in its entirety and substituting the following language:

(b) Upon filing a complete registration statement, the commissioner shall investigate the registration statement filed pursuant to § 45-13-103(b)(1), to the extent the commissioner deems necessary. The commissioner shall deliver a certificate of registration to the person if the commissioner finds that the person:

(1) Has the financial responsibility, experience and character to warrant the belief that the business of the person will be operated lawfully and within the purposes of this chapter;

(2) That the person has a tangible net worth (tangible assets less liabilities) of not less than twenty-five thousand dollars (\$25,000), and an additional tangible net worth of twenty-five thousand dollars (\$25,000) for each additional location within this state specified in the registration statement; and

(3) That the person has paid the investigation fee of the one hundred dollars (\$100).

If the commissioner does not so find, the commissioner shall deny the registration statement and notify the person of the denial, give notice of the grounds for the denial and notify the person of the right to request a hearing. The commissioner shall approve or deny every registration statement hereunder within ninety (90) days from the date a complete registration statement is filed, and the failure to respond within the ninety-day period shall constitute approval of the registration statement. The commissioner shall notify the person of the date when the registration statement is deemed complete. Nothing contained herein shall prohibit a person from modifying or amending the registration statement in order to seek approval by the commissioner. If the commissioner denies any registration statement and if the person requests a hearing, the commissioner shall conduct such hearing under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5; provided, that such person has requested such hearing in writing within thirty (30) days following the denial of the registration statement by the commissioner. At any such hearing, the burden of proving that the person is entitled to a certificate of registration is on that person.

SECTION 7. Tennessee Code Annotated, Section 45-13-119 is amended by adding the following language as new subsections:

(c) Each person filing a registration statement under § 45-13-103(b)(1) shall have successfully completed an educational training course approved by the commissioner. The commissioner may require that each individual who is a director, officer, partner, managing member, managing principal or branch manager, as well as any individual who directs the affairs of the person, establishes policy, or possesses control of the person as defined in § 45-13-102(5), shall have successfully completed an educational training course approved by the commissioner. This subsection shall not become effective until the commissioner has approved at least one (1) educational training course. This subsection shall not apply to renewals of existing certificates of registration.

(d) The commissioner is authorized to require a person filing a registration statement pursuant to § 45-13-103(b)(1) to consent to a criminal history records check and to provide with the registration statement a set of the filer's fingerprints in a form acceptable to the commissioner. The commissioner may require such consent and fingerprints from any individual who is a director, officer, partner, managing member, managing principal, branch manager or ultimate equitable owner of ten percent (10%) or more of the person filing the registration statement, as well as from any individual who directs the affairs of the person or establishes policy. Refusal of any person to consent to a criminal history records check or to provide fingerprints as allowed by this section constitutes grounds for the commissioner to deny issuance of the certificate of registration.

(e) Any criminal history records check conducted under subsection (d) shall be conducted by the Tennessee bureau of investigation and/or the federal bureau of

investigation, and the results of the criminal history records check shall be forwarded to the commissioner. The reasonable costs incurred in conducting such criminal history records check shall be paid by the person filing the registration statement to the commissioner, in addition to any other investigative fees required by this section.

SECTION 8. Tennessee Code Annotated, Section 45-13-126 is amended by deleting the section in its entirety and substituting instead the following language:

(a) Before an individual may provide services as a mortgage loan originator for a licensee or registrant, that individual shall be registered with the commissioner in affiliation with that licensee or registrant. A mortgage loan originator shall not be registered in affiliation with more than one (1) licensee or registrant at the same time.

(b) To register a mortgage loan originator, the licensee or registrant shall submit to the commissioner a completed registration form. The registration form shall be in writing and under oath, in a form prescribed by the commissioner. The registration form shall contain any information the commissioner deems necessary, including the following:

(1) The name of the licensee or registrant for whom the mortgage loan originator will provide services as a mortgage loan originator;

(2) The mortgage loan originator's name, birth date, social security number and address;

(3) The location where the mortgage loan originator shall engage in mortgage business activities; and

(4) A statement certifying that the individual is qualified to act as a mortgage loan originator.

(c) Each registration form shall be accompanied by the following:

(1) A registration fee prescribed by the commissioner, which shall constitute the registration fee for the first year of registration or part thereof;

(2) When required by the commissioner, the mortgage loan originator's consent to a criminal history record check and a set of the mortgage loan originator's fingerprints in a form acceptable to the commissioner; and,

(3) Satisfactory evidence that the mortgage loan originator has successfully completed an educational training course approved by the commissioner. This subdivision shall not become effective until the commissioner has approved at least one (1) educational training course. This subsection shall not apply to renewals of existing registration certificates.

(d) Upon submission of a properly completed registration form and all of the items required under § 45-13-126(c), and upon receipt thereof by the commissioner, the individual named in the registration form may act provisionally as a mortgage loan originator until the commissioner has acted upon the registration form. The commissioner shall investigate each registration form to the extent deemed necessary, and if the commissioner finds that the individual named in the registration form is qualified to act as a mortgage loan originator, the commissioner shall issue to the licensee or registrant for whom the mortgage loan originator shall be providing services a mortgage loan originator registration certificate. The registration certificate shall contain the name of the mortgage loan originator, the name of the licensee or registrant for whom the mortgage loan originator shall be providing services, and the address of the principal office of such licensee or registrant. The licensee or registrant for whom the mortgage loan originator is providing services shall either:

(1) Display the registration certificate at the office or work station of the mortgage loan originator; or

(2) Maintain the registration certificate in a binder or similar device; provided, that the licensee or registrant posts a sign at the office or workstation of the mortgage loan originator indicating that registration certificates are available for public inspection upon request.

(e) The registration certificate of each mortgage loan originator shall expire at the same time as the licensee's license or registrant's certificate of registration expires unless the mortgage loan originator's registration is renewed. In order to renew the registration certificate of each mortgage loan originator, the licensee or registrant for whom the mortgage loan originator provides services, pursuant to the time period set forth in § 45-13-105(c)(2), shall:

(1) Pay the renewal fee prescribed by the commissioner for each mortgage loan originator;

(2) Submit such forms as requested by the commissioner; and,

(3) Submit satisfactory evidence that each mortgage loan originator is in compliance with any continuing educational requirements adopted by the commissioner pursuant to § 45-13-105(c)(3).

(f) If the services of a mortgage loan originator are terminated, the licensee or registrant for whom such services have been provided shall return the original registration certificate within fourteen (14) business days after the cessation of the provision of such services, and the failure of a licensee or registrant to timely return the original registration certificate constitutes a violation of this chapter, for which the commissioner may take any or all of the actions enumerated in § 45-13-116. It is not necessary for a licensee or registrant to return the registration certificate of a mortgage loan originator who changes from one branch office to another branch office of the

licensee or registrant; provided, that the licensee or registrant notifies the commissioner in writing within fourteen (14) business days of the change.

(g) A mortgage loan originator who ceases providing services for a licensee or registrant named in the registration certificate may not perform services as a mortgage loan originator for another licensee or registrant unless a new registration certificate is obtained under this section.

(h) The commissioner may refuse to register any mortgage loan originator who:

(1) Changes affiliation two or more times during a calendar year, if the commissioner determines that the change is for the purpose of evading the licensing or registration requirements of this chapter;

(2) Has failed to successfully complete any educational training course required under § 45-13-126(c)(2), or to comply with any continuing educational requirements adopted by the commissioner pursuant to § 45-13-105(c)(3);

(3) Refuses to consent to a criminal history records check or to provide a set of the mortgage loan originator's fingerprints as required by the commissioner; or

(4) Is found by the commissioner to not have the character or general fitness to warrant the belief that the individual will act as a mortgage loan originator lawfully and within the purposes of this chapter.

(i) If the commissioner refuses to register any mortgage loan originator, the commissioner shall notify the mortgage loan originator of the refusal, give notice of the grounds for refusal, and notify the mortgage loan originator of the right to request a hearing. If the mortgage loan originator requests a hearing, the commissioner shall

conduct such hearing under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5; provided, that the mortgage loan originator has requested such hearing in writing within thirty (30) days following the commissioner's refusal to register the mortgage loan originator. At any such hearing, the burden of proving that the mortgage loan originator is entitled to a registration certificate shall be upon the mortgage loan originator.

(j) The commissioner shall keep a current roster showing the names of all mortgage loan originators and the licensee or registrant for whom the mortgage loan originator provides services.

(k) The commissioner shall have the authority to require a criminal history background check at any time as a condition of continued registration of a mortgage loan originator. Upon request of the commissioner, a licensee or registrant shall obtain and furnish to the commissioner the mortgage loan originator's consent to a criminal history record check and a set of the mortgage loan originator's fingerprints in a form acceptable to the commissioner. Failure of the licensee or registrant to provide the consent to a criminal history record check and the fingerprints within thirty (30) days of the commissioner's request constitutes grounds for the commissioner to suspend or revoke the registration certificate of the mortgage loan originator. If the mortgage loan originator has ceased providing mortgage loan origination services to the licensee or registrant, the licensee or registrant may alternatively return to the commissioner that mortgage loan originator's registration certificate to comply with a request made under this subsection.

(l) Any criminal history records check conducted under this section shall be conducted by the Tennessee bureau of investigation and/or the federal bureau of investigation, and the results of the criminal history records check shall be forwarded to

the commissioner. The reasonable costs incurred in conducting such criminal history records check shall be paid by the licensee, registrant or mortgage loan originator, in addition to any other investigative fees required by this section.

(m) The commissioner may suspend or revoke any registration certificate issued hereunder if the commissioner, after notice and opportunity for hearing, finds that the mortgage loan originator is guilty of any act, omission or conduct enumerated in § 45-13-108(a).

SECTION 9. Tennessee Code Annotated, Title 45, Chapter 13, Part 1, is amended by adding the following language as a new appropriately designated section:

45-13-1\_\_

(a) The commissioner may participate in the establishment and implementation of a multi-state automated licensing system for persons subject to licensing or registration under this chapter as mortgage lenders, mortgage loan servicers, mortgage loan brokers, and mortgage loan originators. Pursuant to this authority, the commissioner may:

(1) Establish by rule such new requirements as are necessary for participation in the system;

(2) Enter into agreements reasonably necessary to the organization and operation of the system. Such agreements may include, but are not limited to operating agreements, information sharing agreements, interstate cooperative agreements, and technology licensing agreements;

(3) Require that applications for licensing and registration as well as renewals of such licenses and registrations for mortgage lenders, mortgage loan

servicers, mortgage loan brokers or mortgage loan originators be filed with the system;

(4) Require the payment by the mortgage lender, mortgage loan servicer, mortgage loan broker, or mortgage loan originator of the licensing, registration, and investigation fees specified in this chapter and any additional fees required for participation in the system to be made to the commissioner or to the system, agency, or enterprise designated by the commissioner; and,

(5) Take such further actions as are reasonably necessary to give effect to the provisions of this section.

(b) Nothing in this section shall authorize the commissioner to require a person who is not subject to the licensing or registration requirements of this chapter to submit information to or to participate in the system.

(c) Notwithstanding any other provision of this section, the commissioner retains full authority and discretion to license and register persons under this chapter and to enforce this chapter to its fullest extent. Nothing in this section shall be deemed to be a reduction or derogation of that authority and discretion.

(d) For purposes of this section, "system" means the multi-state automated licensing system.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2009, the public welfare requiring it.

