

CHAPTER NO. 747

SENATE BILL NO. 3455

By Herron, Crutchfield, Trail, Harper, Dixon, Norris, Cooper, McLeary, Burks, Kurita

Substituted for: House Bill No. 3539

By McMillan, Fitzhugh, West, Coleman, Marrero, Garrett, Ulysses Jones, Rinks, Kent, Tindell, Maddox, Towns, Odom, Michael Turner, Armstrong, Harry Brooks, Shaw, Vincent, Miller, Hackworth, Fowlkes, Sharp, Sherry Jones, Lois DeBerry, Head, Hargrove, Shepard, Sargent, Hargett, Sontany, Fitzhugh, Eldridge, DuBois, Fraley, Hood, Wood, Brown, Gresham, Hensley, Vaughn, Yokley, Dunn, Brenda Turner, Phillip Johnson, Winningham, Patton, Bone, Lynn, Black, Baird, Todd, Montgomery, Pleasant, Litz, Windle, Matheny, Hagood, Cooper, Mr. Speaker Naifeh

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 5 and Chapter 13, relative to the regulation of industrial loan and thrift companies and certain mortgage lenders, mortgage loan brokers, and mortgage loan servicers, and to amend Tennessee Code Annotated, Section 45-1-105(b)(2).

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

SECTION 1. Tennessee Code Annotated, Section 45-13-102, is amended by deleting the section in its entirety and substituting instead the following language:

45-13-102. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the Commissioner of Financial Institutions;

(2) "Branch manager" means the individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a licensee or registrant;

(3) "Branch office" means an office of a licensee or registrant that is separate and distinct from the licensee's or registrant's principal place of business;

(4) "Certificate of registration" means a certificate of registration issued to a registrant pursuant to § 45-13-119;

(5) "Control" means possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities by contract or otherwise; provided, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person. For purposes of this section, a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing twenty-five percent (25%) or more of the then outstanding voting securities issued by another person is presumed to control

such other person. For purposes of this section, the commissioner may determine whether a person, in fact, controls another person;

(6) "License" means a license issued pursuant to § 45-13-105;

(7) "Licensee" means a person to whom a license has been issued;

(8) "Managing principal" means a person who agrees to be primarily responsible for the operations of a licensee or registrant;

(9) "Mortgage" means a "mortgage" or "deed of trust" as defined in and allowed pursuant to § 66-5-103;

(10) "Mortgage lender" means any person who in the regular course of business lends money that is secured by a mortgage;

(11) "Mortgage loan" means any one-to-four family residential owner occupied loan secured by a first or second mortgage intended for personal, family, or household purposes;

(12) "Mortgage loan broker" means any person who for compensation or other gain, paid directly or indirectly, or in expectation of compensation or other gain, solicits, processes, places, negotiates or originates mortgage loans for others, or offers to solicit, process, place, negotiate or originate mortgage loans for others or who closes mortgage loans which may be in the mortgage loan broker's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans; regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers;

(13) "Mortgage loan originator" means an individual who provides services to one and not more than one licensee or registrant, is subject to the direct supervision and control of that licensee or registrant, and in exchange for compensation by that licensee or registrant, performs any one or more of the acts described in subsection (12) of this section. The term does not include an employee of a licensee or registrant whose job responsibilities are limited to clerical tasks;

(14) "Mortgage loan servicer" means any person who in the regular course of business assumes responsibility for servicing and accepting payments for a mortgage loan;

(15) "Mortgagor" means any individual person who executes a mortgage which is a mortgage loan;

(16) "Person" means an individual, corporation, partnership or trust, as the context may require;

(17) "Registrant" means a person to whom a certificate of registration has been issued;

(18) "Registration certificate" means a registration certificate issued pursuant to § 45-13-126;

(19) "Registration statement" means a registration statement filed pursuant to Section 45-13-103; and,

(20) "Residential real property" means improved real property used or occupied or intended to be used or occupied for residential purposes by the owner.

SECTION 2. Tennessee Code Annotated, Section 45-13-103(a), is amended by deleting the language preceding the semicolon and substituting instead the following language:

No person shall act as a mortgage lender, mortgage loan broker, mortgage loan servicer, or mortgage loan originator in this state without first complying with the applicable licensing or registration requirements under this chapter

SECTION 3. Tennessee Code Annotated, Section 45-13-106, is amended by deleting subsections (c) and (d) in their entirety.

SECTION 4. Tennessee Code Annotated, Section 45-13-108, is amended by deleting the section in its entirety and substituting instead the following language:

Section 45-13-108. Suspension or revocation of licenses or registrations.

(a) The commissioner may suspend or revoke any license or registration issued hereunder if the commissioner, after notice and opportunity for hearing, finds that the licensee or registrant is guilty of the following:

(1) Failure to comply with any provision of this chapter or any administrative rule issued pursuant thereto;

(2) Conduct of a manner which would warrant the denial of an application for a license or registration;

(3) Making a false statement in any application or report filed with the commissioner;

(4) Refusing to permit the commissioner to make any examination authorized by this chapter;

(5) Has been convicted of or pled guilty to or pled nolo contendere to any crime reasonably related to the qualifications, functions, or duties of a person engaged in business under this chapter;

(6) Has been held liable in any civil action by final judgment, or any administrative judgment by any public agency reasonably related to the qualifications, functions, or duties of a person engaged in business under this chapter;

(7) Making any false written promise which is intended to and which is likely to influence, persuade, or induce a person to enter into a mortgage loan, or pursuing a course of misrepresentation or false promises through agents, employees, advertising, or otherwise;

(8) Substantial misrepresentation, circumvention, or concealment of any of the material particulars or the nature thereof, regarding a mortgage transaction to which such person is a party;

(9) Failure to disburse funds in accordance with a written agreement;

(10) Failure to account for or deliver to any person any personal property obtained in connection with a mortgage loan, such as money, funds, deposits, checks, drafts, mortgages or other documents or things of value that have come into the possession of the licensee or registrant and that are not the property of the licensee or registrant or that the licensee or registrant is not by law or at equity entitled to retain;

(11) Obtaining any agreement or instrument in which blanks are left to be filled in after execution;

(12) Accepting any fees at closing which were not disclosed;

(13) Engaging in a pattern of consistently and materially underestimating the closing costs;

(14) Delaying closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower; or

(15) Attempting to intimidate a real estate appraiser or influence an appraiser's report relating to market conditions or determination of value.

(b) If the reason for suspension or revocation of a license or certificate of registration at any one (1) location is of general application to all locations operated by a licensee or registrant, the commissioner may revoke or suspend all licenses or certificates of registration issued to the licensee or registrant.

(c) When a licensee or registrant is accused of any act, omission, or misconduct that would subject the licensee or registrant to disciplinary action, the licensee or registrant, with the consent and approval of the commissioner, may surrender the license or certificate of registration and all the rights and privileges pertaining to it for a period of time established by the commissioner. A person who surrenders a license or certificate of registration shall not be eligible for or submit any application for a license or registration under this chapter, for such period of time as established by the commissioner.

(d) A licensee or registrant is subject to disciplinary action, if any officer, director, person owning twenty-five percent (25%) or more of the licensee or registrant's outstanding capital, member, partner, managing principal, branch

manager, mortgage loan originator, any employee or any other person who acts on behalf of the licensee or registrant violates any provision of subsection (a) of this section.

(e) No license or certificate of registration shall be assignable.

SECTION 5. Tennessee Code Annotated, Section 45-13-112(a), is amended by deleting the words ", after written notice of not less than fourteen (14) days, and for cause shown, at any time and as often as the commissioner may determine,".

SECTION 6. Tennessee Code Annotated, Section 45-13-112(b), is amended by deleting the first sentence in its entirety and substituting instead the following language:

The licensee or registrant shall pay to the commissioner the reasonable and actual expenses of the investigation and examination.

SECTION 7. Tennessee Code Annotated, Section 45-13-116, is amended by deleting subsections (a) and (b) and substituting instead the following language:

Section 45-13-116. Violations – Cease and Desist Orders – Penalties.

If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or administrative rule issued pursuant thereto, the commissioner may take any or all of the following actions:

(1) Order the person to cease and desist violating this chapter or any administrative rule issued pursuant thereto.

(2) Require the refund of any interest, fees, or charges collected by such person in violation of this chapter or any administrative rule issued pursuant thereto.

(3) Order the person to pay the commissioner a civil money penalty of not more than ten thousand dollars (\$10,000) for each violation of this chapter or administrative rule issued pursuant thereto.

SECTION 8. Tennessee Code Annotated, Section 45-13-121, is amended by deleting the words "of employment, management or control of any licensee or registrant," from subsection (a) and substituting instead the words "of management, control, employment or providing services for any licensee or registrant or other person subject to the commissioner's jurisdiction," and by inserting the language "or licensee" in subsection (b) following the word "registrant" wherever it occurs.

SECTION 9. Tennessee Code Annotated, Section 45-13-122, is amended by inserting the language "or licensee" following the word "registrant" wherever it occurs.

SECTION 10. Tennessee Code Annotated, Title 45, Chapter 13, is amended by adding the following new sections:

Section 45-13-124. Consent Orders.

(a) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule, regulation or order promulgated or issued hereunder has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this chapter or any rule, regulation or order promulgated or issued under this chapter.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken which is filed with the commissioner within twenty (20) days after receipt of the notice to the commissioner's emergency action.

Section 45-13-125. Managing principals and branch managers.

(a) Each mortgage lender or mortgage loan broker licensed or registered under this chapter shall have a managing principal who operates the business under that person's full charge, control, and supervision. Each principal and branch office of a mortgage lender or mortgage loan broker shall have a manager. The mortgage lender or mortgage loan broker shall have the responsibility of ensuring that the manager has sufficient experience in the mortgage lending industry to operate the business of the mortgage lender or mortgage loan broker lawfully. The managing principal for a mortgage lender's or mortgage loan broker's business may also serve as the branch manager of one of the mortgage lender's or mortgage loan broker's branch offices. Any individual mortgage lender or mortgage loan broker who operates a sole proprietorship shall be considered a managing principal for purposes of this chapter.

(b) Each mortgage lender or mortgage loan broker shall file a form as prescribed by the commissioner indicating the business' designation of managing principal and branch manager for each branch and each individual's acceptance of the responsibility.

(c) Each mortgage lender or mortgage loan broker shall notify the commissioner in writing within fourteen (14) business days of any change in its managing principal or branch manager designated for each branch.

Section 45-13-126. Registration of mortgage loan originators – Posting – Termination of Services.

(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 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; and

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

(c) Each registration form shall be accompanied by a registration fee prescribed by the commissioner, which shall constitute the registration fee for the first year of registration or part thereof;

(d) Upon receipt of a properly completed registration form and the requisite fee, 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 certificates 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 pay the renewal fee prescribed by the commissioner for each mortgage loan originator and submit such forms as requested by the commissioner.

(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. 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, the licensee or registrant notifies the commissioner in writing of the change.

(g) A mortgage loan originator who ceases providing services for the 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 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.

(i) 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.

(j) A licensee or registrant who possessed a license or certificate of registration under this chapter before January 1, 2005, and who retained a mortgage loan originator before January 1, 2005, may continue to retain the services of such mortgage loan originator until the commissioner has acted upon the registration form submitted by the licensee or registrant on behalf of the mortgage loan originator, provided the licensee or registrant submits the registration form in accordance with the provisions of this section within three (3) months after January 1, 2005.

Section 45-13-127. Relationship between mortgage loan originator and a licensee or registrant.

(a) A licensee or registrant for whom a mortgage loan originator provides services is responsible for, and shall supervise the acts of, such mortgage loan originator.

(b) A licensee or registrant shall ensure that each application for a mortgage loan contain the name and license number or registration number of the licensee or registrant as well as the name, signature, and registration number of the mortgage loan originator who provided services with respect to the mortgage loan.

(c) If the commissioner suspends or revokes a licensee's license or a registrant's certificate of registration, a mortgage loan originator shall not act on behalf of that licensee or registrant during the period of suspension or revocation.

Section 45-13-128. Lost licenses, certificates of registration or mortgage loan originator registration certificates -- substitutions.

In the event that a license, certificate of registration or mortgage loan originator registration certificate issued under this chapter is lost or destroyed, the person to whom

the license or certificate of registration was issued may, upon payment of a fee prescribed by the commissioner, obtain a substitute license or certificate of registration, upon furnishing proof satisfactory to the commissioner that the license or certificate of registration has become lost or destroyed.

SECTION 11. Tennessee Code Annotated, Title 45, Chapter 5, Part 2, is amended by adding the following new section:

Section 45-5-206. Lost certificates of registration – substitutions.

In the event that a certificate of registration issued under this chapter is lost or destroyed, the person to whom the certificate of registration was issued may, upon payment of a fee prescribed by the commissioner, obtain a substitute certificate of registration, upon furnishing proof satisfactory to the commissioner that the certificate of registration has become lost or destroyed.

SECTION 12. Tennessee Code Annotated, Section 45-5-501(c), is amended by deleting the second, third and fourth sentences.

SECTION 13. Tennessee Code Annotated, Section 45-5-502, is amended by deleting the first sentence in its entirety and substituting instead the following language:

Each registrant shall pay the reasonable and actual expenses for any inspection or compliance examination conducted under this chapter.

SECTION 14. Tennessee Code Annotated, Section 45-5-504, is amended by deleting subsections (a) through (e) and substituting instead the following language:

Section 45-5-504. Violations – Cease and Desist Orders – Penalties.

If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or any administrative rule issued pursuant thereto, the commissioner may take any or all of the following actions:

(1) Order the person to cease and desist violating this chapter or any administrative rule issued pursuant thereto.

(2) Require the refund of any interest, fees, or charges collected by such person in violation of this chapter or any administrative rule issued pursuant thereto.

(3) Order the person to pay the commissioner a civil money penalty of not more than ten thousand dollars (\$10,000) for each violation of this chapter or administrative rule issued pursuant thereto.

SECTION 15. Tennessee Code Annotated, Section 45-5-506, is amended by deleting the words "of employment, management or control of any registrant" from subsection (a) and substituting instead the words "of management, control, employment or providing services for any registrant or other person subject to the commissioner's jurisdiction,".

SECTION 16. Tennessee Code Annotated, Title 45, Chapter 5, Part 5, is amended by adding the following new section:

Section 45-5-509. Consent Orders.

(a) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule, regulation or order promulgated or issued hereunder has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this chapter or any rule, regulation or order promulgated or issued under this chapter.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken which is filed with the commissioner within twenty (20) days after receipt of the notice to the commissioner's emergency action.

SECTION 17. Tennessee Code Annotated, Section 45-1-105 (b)(2), is amended by deleting the language in its entirety and substituting instead the following language:

The deputy commissioner and assistant commissioners shall be persons of good character and have a minimum of three (3) years experience in the theory and practice of banking, or in the function and operation of credit unions in the case of the assistant commissioner for the credit union division, or in the function and operation of a financial institution in the case of the assistant commissioner for the compliance division, all of which must have been in a full-time management or regulatory capacity. For the purpose of this subsection, the term "financial institution" shall mean any institution subject to the commissioner's jurisdiction and shall include similar entities regulated by any other state or federal regulatory agency.

SECTION 18. Severability. If any provision of this chapter or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

SECTION 19. Sections 3, 5, 7, 8, 9, 12, 14, 15, 17 and 18 of this act shall take effect immediately upon becoming a law, the public welfare requiring it. For the purpose of promulgating rules and regulations, this act shall take effect immediately upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2005, the public welfare requiring it.

PASSED: May 10, 2004


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of May 2004


PHIL BREDESEN, GOVERNOR