

COMMITTEE REPORT

Madam President: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedure, to which was referred Engrossed Senate Bill 275 because it conflicts with HEA 1294-2012 without properly recognizing the existence of HEA 1294-2012, has had Engrossed Senate Bill 275 under consideration and begs leave to report back to the Senate with the recommendation that Engrossed Senate Bill 275 be corrected as follows:

- 1 Page 2, delete line 42.
- 2 Delete pages 3 through 7.
- 3 Page 8, delete lines 1 through 10, begin a new paragraph and insert:
- 4 "SECTION 3. IC 23-2-5-3, AS AMENDED BY HEA 1294-2012,
- 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 6 JULY 1, 2014]: Sec. 3. (a) As used in this chapter, "loan broker
- 7 license" means a license issued by the commissioner authorizing a
- 8 person to engage in the loan brokerage business.
- 9 (b) As used in this chapter, "licensee" means a person that is issued
- 10 a license under this chapter.
- 11 (c) As used in this chapter, "loan broker" means any person who, in
- 12 return for any consideration from any source procures, attempts to
- 13 procure, or assists in procuring, a residential mortgage loan from a
- 14 third party or any other person, whether or not the person seeking the
- 15 loan actually obtains the loan. "Loan broker" does not include:
- 16 (1) any supervised financial organization (as defined in
- 17 IC 26-1-4-102.5), including a bank, savings bank, trust company,
- 18 savings association, or credit union;
- 19 (2) any other financial institution that is:
- 20 (A) regulated by any agency of the United States or any state;
- 21 and
- 22 (B) regularly actively engaged in the business of making
- 23 consumer loans that are not secured by real estate or taking
- 24 assignment of consumer sales contracts that are not secured by
- 25 real estate;

- 1 (3) any insurance company;
- 2 (4) any person arranging financing for the sale of the person's
- 3 product; or
- 4 (5) a creditor that is licensed under IC 24-4.4-2-402.
- 5 (d) As used in this chapter, "loan brokerage business" means a
- 6 person acting as a loan broker.
- 7 (e) As used in this chapter, "mortgage loan origination activities"
- 8 means performing any of the following activities for compensation or
- 9 gain in connection with a residential mortgage loan:
- 10 (1) Receiving or recording a borrower's or potential borrower's
- 11 residential mortgage loan application information in any form for
- 12 use in a credit decision by a creditor.
- 13 (2) Offering to negotiate or negotiating terms of a residential
- 14 mortgage loan.
- 15 (f) As used in this chapter, "borrower's residential mortgage loan
- 16 application information" means the address of the proposed residential
- 17 real property to be mortgaged and borrower's essential personal and
- 18 financial information necessary for an informed credit decision to be
- 19 made on the borrower's mortgage loan application.
- 20 (g) As used in this chapter, "mortgage loan originator" means an
- 21 individual engaged in mortgage loan origination activities. The term
- 22 does not include a person who:
- 23 (1) performs purely administrative or clerical tasks on behalf of
- 24 a mortgage loan originator or acts as a loan processor or
- 25 underwriter;
- 26 (2) performs only real estate brokerage activities and is licensed
- 27 in accordance with IC 25-34.1 or the applicable laws of another
- 28 state, unless the person is compensated by a creditor, a loan
- 29 broker, a mortgage loan originator, or any agent of a creditor, a
- 30 loan broker, or a mortgage loan originator; or
- 31 (3) is involved only in extensions of credit relating to time share
- 32 plans (as defined in 11 U.S.C. 101(53D)).
- 33 (h) As used in this chapter, "mortgage loan originator license"
- 34 means a license issued by the commissioner authorizing an individual
- 35 to act as a mortgage loan originator on behalf of a loan broker licensee.
- 36 (i) As used in this chapter, "person" means an individual, a
- 37 partnership, a trust, a corporation, a limited liability company, a limited
- 38 liability partnership, a sole proprietorship, a joint venture, a joint stock
- 39 company, or another group or entity, however organized.
- 40 (j) As used in this chapter, "ultimate equitable owner" means a

1 person who, directly or indirectly, owns or controls ten percent (10%)
2 or more of the equity interest in a loan broker licensed or required to be
3 licensed under this chapter, regardless of whether the person owns or
4 controls the equity interest through one (1) or more other persons or
5 one (1) or more proxies, powers of attorney, or variances.

6 (k) As used in this chapter, "principal manager" means an individual
7 who:

8 (1) has at least three (3) years of experience:

9 (A) as a mortgage loan originator; or

10 (B) in financial services;

11 that is acceptable to the commissioner; and

12 (2) is principally responsible for the supervision and management
13 of the employees and business affairs of a loan broker licensee.

14 (l) As used in this chapter, "principal manager license" means a
15 license issued by the commissioner authorizing an individual to act as:

16 (1) a principal manager; and

17 (2) a mortgage loan originator;

18 on behalf of a loan broker licensee.

19 (m) As used in this chapter, "bona fide third party fee", with respect
20 to a residential mortgage loan, includes any of the following:

21 (1) Fees for real estate appraisals. However, if the residential
22 mortgage loan is governed by Title XI of the Financial Institutions
23 Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through
24 3352), the fee for an appraisal performed in connection with the
25 loan is not a bona fide third party fee unless the appraisal is
26 performed by a person that is licensed or certified under
27 IC 25-34.1-3-8.

28 (2) Fees for title examination, abstract of title, title insurance,
29 property surveys, or similar purposes.

30 (3) Notary and credit report fees.

31 (4) Fees for the services provided by a loan broker in procuring
32 possible business for a creditor if the fees are paid by the creditor.

33 (n) As used in this chapter, "branch office" means any fixed physical
34 location from which a loan broker licensee holds itself out as engaging
35 in the loan brokerage business.

36 (o) As used in this chapter, "loan processor or underwriter" means
37 an individual who:

38 (1) is employed by a loan broker licensee and acts at the direction
39 of, and subject to the supervision of, the loan broker licensee or
40 a licensed principal manager employed by the loan broker

- 1 licensee; and
- 2 (2) performs solely clerical or support duties on behalf of the loan
- 3 broker licensee, including any of the following activities with
- 4 respect to a residential mortgage loan application received by the
- 5 loan broker licensee:
- 6 (A) The receipt, collection, distribution, and analysis of
- 7 information commonly used in the processing or underwriting
- 8 of a residential mortgage loan.
- 9 (B) Communicating with a borrower or potential borrower to
- 10 obtain the information necessary for the processing or
- 11 underwriting of a residential mortgage loan, to the extent that
- 12 the communication does not include:
- 13 (i) offering or negotiating loan rates or terms; or
- 14 (ii) counseling borrowers or potential borrowers about
- 15 residential mortgage loan rates or terms.
- 16 (p) As used in this chapter, "real estate brokerage activity" means
- 17 any activity that involves offering or providing real estate brokerage
- 18 services to the public, including any of the following:
- 19 (1) Acting as a real estate broker ~~or salesperson~~ for a buyer, seller,
- 20 lessor, or lessee of real property.
- 21 (2) Bringing together parties interested in the sale, lease, or
- 22 exchange of real property.
- 23 (3) Negotiating, on behalf of any party, any part of a contract
- 24 concerning the sale, lease, or exchange of real property, other than
- 25 in connection with obtaining or providing financing for the
- 26 transaction.
- 27 (4) Engaging in any activity for which the person performing the
- 28 activity is required to be licensed under IC 25-34.1 or the
- 29 applicable laws of another state.
- 30 (5) Offering to engage in any activity, or to act in any capacity
- 31 with respect to any activity, described in subdivisions (1) through
- 32 (4).
- 33 (q) As used in this chapter, "registered mortgage loan originator"
- 34 means a mortgage loan originator who:
- 35 (1) is an employee of:
- 36 (A) a depository institution;
- 37 (B) a subsidiary that is:
- 38 (i) owned and controlled by a depository institution; and
- 39 (ii) regulated by a federal financial institution regulatory
- 40 agency (as defined in 12 U.S.C. 3350(6)); or

1 (C) an institution regulated by the Farm Credit Administration;
2 and

3 (2) is registered with and maintains a unique identifier with the
4 Nationwide Mortgage Licensing System and Registry.

5 (r) As used in this chapter, "residential mortgage loan" means a loan
6 that is or will be used primarily for personal, family, or household
7 purposes and that is secured by a mortgage (or another equivalent
8 consensual security interest) on a dwelling (as defined in Section
9 103(w) of the federal Truth in Lending Act (15 U.S.C. 1602(w)) or on
10 residential real estate on which a dwelling is constructed or intended
11 to be constructed.

12 (s) As used in this chapter, "personal information" includes any of
13 the following:

14 (1) An individual's first and last names or first initial and last
15 name.

16 (2) Any of the following data elements:

17 (A) A Social Security number.

18 (B) A driver's license number.

19 (C) A state identification card number.

20 (D) A credit card number.

21 (E) A financial account number or debit card number in
22 combination with a security code, password, or access code
23 that would permit access to the person's account.

24 (3) With respect to an individual, any of the following:

25 (A) Address.

26 (B) Telephone number.

27 (C) Information concerning the individual's:

28 (i) income or other compensation;

29 (ii) credit history;

30 (iii) credit score;

31 (iv) assets;

32 (v) liabilities; or

33 (vi) employment history.

34 (t) As used in this chapter, personal information is "encrypted" if the
35 personal information:

36 (1) has been transformed through the use of an algorithmic
37 process into a form in which there is a low probability of
38 assigning meaning without use of a confidential process or key;

39 or

40 (2) is secured by another method that renders the personal

1 information unreadable or unusable.

2 (u) As used in this chapter, personal information is "redacted" if the
3 personal information has been altered or truncated so that not more
4 than the last four (4) digits of:

- 5 (1) a Social Security number;
- 6 (2) a driver's license number;
- 7 (3) a state identification number; or
- 8 (4) an account number;

9 are accessible as part of the personal information.

10 (v) As used in this chapter, "depository institution" has the meaning
11 set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and
12 includes any credit union.

13 (w) As used in this chapter, "state licensed mortgage loan
14 originator" means any individual who:

- 15 (1) is a mortgage loan originator;
- 16 (2) is not an employee of:
 - 17 (A) a depository institution;
 - 18 (B) a subsidiary that is:
 - 19 (i) owned and controlled by a depository institution; and
 - 20 (ii) regulated by a federal financial institution regulatory
 - 21 agency (as defined in 12 U.S.C. 3350(6)); or
 - 22 (C) an institution regulated by the Farm Credit Administration;
- 23 (3) is licensed by a state or by the Secretary of the United States
24 Department of Housing and Urban Development under Section
25 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of
26 P.L.110-289); and
- 27 (4) is registered as a mortgage loan originator with, and maintains
28 a unique identifier through, the Nationwide Mortgage Licensing
29 System and Registry.

30 (x) As used in this chapter, "unique identifier" means a number or
31 other identifier that:

- 32 (1) permanently identifies a mortgage loan originator; and
- 33 (2) is assigned by protocols established by the Nationwide
34 Mortgage Licensing System and Registry and the federal financial
35 institution regulatory agencies to facilitate:
 - 36 (A) the electronic tracking of mortgage loan originators; and
 - 37 (B) the uniform identification of, and public access to, the
38 employment history of and the publicly adjudicated
39 disciplinary and enforcement actions against mortgage loan
40 originators.

1 (y) As used in this chapter, "residential real estate" means real
2 property:

3 (1) that is located in Indiana; and

4 (2) upon which a dwelling is constructed or intended to be
5 constructed."

6 Renumber all SECTIONS consecutively.

(Reference is to ESB 275 as reprinted February 21, 2012.)

Senator LONG, Chairperson

Senator SIMPSON, R.M.M.

Senator MERRITT