

ORIGINAL SENATE
FILE NO. 0013

ENROLLED ACT NO. 54, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

AN ACT relating to trade and commerce; creating the Wyoming Residential Mortgage Practices Act to regulate mortgage lenders and brokers; providing definitions; providing requirements and fees; requiring reporting; providing for enforcement; providing for civil and criminal penalties; providing for rulemaking; making an appropriation; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 40-23-101 through 40-23-123 are created to read:

CHAPTER 23
WYOMING RESIDENTIAL MORTGAGE PRACTICES ACT

40-23-101. Short title.

This act may be cited as the "Wyoming Residential Mortgage Practices Act."

40-23-102. Definitions.

(a) As used in this act:

(i) "Borrower" means a person who has applied to a mortgage lender for a residential mortgage loan or on whose behalf the mortgage lending and mortgage brokering activities are conducted;

(ii) "Commissioner" means the state banking commissioner;

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(iii) "Control" means owning twenty-five percent (25%) or more of the voting share of the licensee or having the power to direct the licensee's management or policies;

(iv) "Division" means the division of banking within the department of audit;

(v) "Licensee" means a person licensed under this act;

(vi) "Mortgage broker" means any person, other than those exempt under W.S. 40-23-105, who for compensation, or in the expectation of compensation, assists a person in obtaining or applying to obtain a residential mortgage loan or holds himself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan;

(vii) "Mortgage brokerage agreement" means a written agreement in which a mortgage broker agrees to assist the borrower in obtaining a residential mortgage loan;

(viii) "Mortgage brokering activities" means for compensation, either directly or indirectly, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans;

(ix) "Mortgage lender" means any person, other than those exempt under W.S. 40-23-105, who makes residential mortgage loans to borrowers or holds himself out as able to make mortgage loans;

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(x) "Mortgage lending activities" means for compensation, either directly or indirectly, accepting or offering to accept applications for making residential mortgage loans;

(xi) "Person" means an individual, sole proprietorship, partnership, corporation, limited liability company or other entity, public or private;

(xii) "Real Estate Settlement Procedures Act" means the act set forth in 12 U.S.C. § 2601 et seq., as amended;

(xiii) "Regulation X" means regulation X as promulgated by the United States department of housing and urban development and codified in 24 CFR part 3500 et seq., as amended;

(xiv) "Regulation Z" means regulation Z as promulgated by the board of governors of the federal reserve system and codified in 12 CFR part 226 et seq., as amended;

(xv) "Residential mortgage loan" means a first mortgage loan made primarily for personal, family or household use and primarily secured by a security interest on residential real property;

(xvi) "Residential real property" means real property improved by a one (1) to four (4) family dwelling;

(xvii) "Truth in Lending Act" means the act set forth in 15 U.S.C. § 1601 et seq., as amended;

(xviii) "This act" means W.S. 40-23-101 through 40-23-123.

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40-23-103. Powers and duties of commissioner.

(a) In addition to any other powers and duties imposed upon the commissioner by law, the commissioner shall:

(i) Perform any and all acts necessary to promulgate, administer and enforce the provisions of this act and any rules, regulations, orders, limitations, standards, requirements or licenses issued under this act, and to exercise all incidental powers as necessary to carry out the purposes of this act;

(ii) Order any licensee to cease any activity or practice which the commissioner deems to be deceptive, dishonest, a violation of state or federal laws or regulations or unduly harmful to the interests of the public;

(iii) Conduct investigations, issue subpoenas, and hold hearings as necessary to determine whether a person has violated any provision of this act;

(iv) Conduct examinations of the books and records of licensees and conduct investigations as necessary and proper for the enforcement of the provisions of this act and the rules promulgated under the authority of this act;

(v) Issue orders that are necessary to execute, enforce and effectuate the purposes of this act;

(vi) Require that all application, renewal, licensing, examination and all other fees included under this act shall be deposited by the commissioner with the

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state treasurer into the financial institutions administration account within the earmarked revenue fund.

40-23-104. License requirements.

(a) With the exception of those persons exempt pursuant to W.S. 40-23-105, on and after July 1, 2005, no person shall engage in mortgage lending activities or mortgage brokering activities without first obtaining a license in accordance with this act.

(b) A person engaged in mortgage lending or mortgage brokering activities who advertises, offers or provides services to Wyoming residents through any medium including, but not limited to, internet or other electronic means shall first obtain a license in accordance with this act.

40-23-105. Exemptions from license requirements.

(a) The provisions of this act do not apply to:

(i) Agencies of the United States and agencies of this state and its political subdivisions;

(ii) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold;

(iii) Any person licensed or chartered under the laws of any state or the United States as a bank, savings and loan association, credit union, or trust company or an operating subsidiary of which the person owns or controls eighty percent (80%) or more of the voting stock;

(iv) An attorney licensed to practice law in Wyoming who is not principally engaged in the business of

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negotiating residential mortgage loans when the attorney renders services in the course of his practice as an attorney;

(v) Persons employed by or under contract with licensees on a full-time basis or persons who are employed by or under contract with no more than one (1) licensee on a part-time basis provided that any fees paid by borrowers are paid to the licensee or exempt entity and not to the employee or person under contract;

(vi) Any person who funds a residential mortgage loan which has been originated and processed by a licensee or by an exempt person, who does not directly or indirectly solicit borrowers in Wyoming for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this paragraph, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee or exempt person.

40-23-106. Initial licensing and compliance.

A person conducting mortgage lending or mortgage brokering activities, as of July 1, 2005 shall, not later than September 30, 2005, apply to the commissioner for a license.

40-23-107. Application for license to do business as a mortgage lender or mortgage broker.

(a) The commissioner shall receive and act on all applications for licenses to do business as a mortgage lender or mortgage broker. Applications shall be filed in the manner prescribed by the commissioner, shall contain

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such information as prescribed by the commissioner, shall be updated as prescribed by the commissioner to keep the information current, and shall be accompanied by an application fee not to exceed one thousand dollars (\$1,000.00) for the home office location and an amount not to exceed one hundred dollars (\$100.00) for each additional location, as set by rule of the commissioner. When an application for licensure is denied or withdrawn, the commissioner shall retain all fees paid by the applicant.

(b) An application for license may be granted if the commissioner finds:

(i) The financial responsibility and experience, character and fitness of the license applicant, of the owners or persons in charge of the applicant and individuals designated in charge of the applicant's places of business, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act;

(ii) The applicant has not been convicted of any felony or a misdemeanor involving any aspect of the business;

(iii) The applicant has not been the subject of any administrative action or enforcement proceeding by any state or federal government agency involving fines, penalties or the revocation or suspension of any license or authority substantially equivalent to a license under this act;

(iv) The applicant has not filed an application for a license which is false or misleading with respect to any material fact;

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(v) The applicant has not violated this act or any rule or order lawfully made pursuant to this act; or

(vi) The applicant has provided information on the application as required by the commissioner pursuant to subsection (a) of this section.

(c) The commissioner is empowered to conduct investigations as deemed necessary to determine the existence of the requirements in subsection (b) of this section.

(d) Upon written request, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(i) The commissioner has notified the applicant in writing that his application has been denied, or objections to the application have been filed with the commissioner;

(ii) The commissioner has not issued a license within sixty (60) days after a complete application for the license was filed.

(e) If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the commissioner for his reasonable and necessary expenses incurred as a result of the hearing. Notwithstanding any provision under the Wyoming Administrative Procedure Act, a request for hearing shall not be made more than fifteen (15) days after the applicant has received notification by certified mail that the application has been denied and stating in substance the commissioner's finding supporting denial of the application or that objections have been filed and the substance thereof.

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(f) Every licensee shall license and maintain a home office as a principal location for the transaction of mortgage business. A separate license shall be required for each place of business from which mortgage brokering activities or mortgage lending activities are directly or indirectly conducted. The commissioner may issue additional licenses to the same applicant upon compliance with all the provisions of this act governing the issuance of a single license. Each license shall remain in full force and effect unless the licensee does not satisfy the renewal requirements of W.S. 40-23-109, or the license is relinquished, suspended or revoked. Licenses shall be terminated upon the relinquishment or revocation of a home office license.

(g) No licensee shall change the location of any place of business, consolidate two (2) or more locations, open a new location or close any location, without giving the commissioner prior written notice and paying a license modification fee not to exceed one hundred dollars (\$100.00) as set by rule of the commissioner.

(h) A licensee shall not engage in the business of making or brokering residential mortgage loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that on the license without the approval of the commissioner.

(j) The commissioner may suspend action upon a license application pending resolution of any criminal charges, before any court of competent jurisdiction, against an applicant which would disqualify that applicant if convicted.

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(k) An applicant shall make complete disclosure of all information required in the application, including information concerning officers, directors, partners, members, managers or employees.

40-23-108. Change in control of a licensee.

(a) A licensee shall give the commissioner written notice of a proposed change of control of a licensee within fifteen (15) business days after learning of the proposed change of control.

(b) The commissioner may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information shall be limited to the same information required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(c) The licensee shall reapply and submit the required fees established by rule, not to exceed one thousand dollars (\$1,000.00) for a home office location and an amount not to exceed one hundred dollars (\$100.00) for each additional location upon a change in the control of the licensee as determined by the commissioner. The license is not transferable nor assignable to the new persons in control of the licensee.

(d) Before filing a request for approval to acquire control, a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall

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enter an order stating the proposed person and transaction is not subject to the requirements of subsections (a) through (c) of this section.

40-23-109. License renewal and annual report.

(a) Each license issued under this act shall expire on June 30. The license shall be renewed annually not less than thirty (30) days before the stated expiration date. The renewal fee for each license shall not exceed one thousand dollars (\$1,000.00) for the home office location and an amount not to exceed one hundred dollars (\$100.00) for each additional location, as set by rule of the commissioner.

(b) The renewal fee shall be accompanied by a report, in a form prescribed by the commissioner, which shall include:

(i) Any material changes to any of the information submitted by the licensee on its original application which have not been reported previously to the commissioner on any other report required to be filed under this act;

(ii) Any update necessary on the surety bond;

(iii) Any update on civil or criminal proceedings against the licensee or any administrative or enforcement proceedings by any state or federal government agency involving fines, penalties or the revocation or suspension of any business licensee or authority substantially equivalent to a license under this act;

(iv) Any other information as the commissioner may deem necessary.

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40-23-110. Surety bonds.

(a) All licensees shall maintain a surety bond to the state of Wyoming in accordance with this section. The bond to be maintained shall be in the amount of twenty-five thousand dollars (\$25,000.00). This amount shall be increased by an additional sum of ten thousand dollars (\$10,000.00) for each licensed office. The bond shall be a continuing obligation of the issuing surety. The surety's liability under the bond for any claims made under the bond either individually or in the aggregate shall in no event exceed the face amount of the bond issued. The bond shall be issued by a surety authorized to do business in the state of Wyoming. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the commissioner.

(b) In the event that a licensee or person employed by or under contract with a licensee has violated any of the provisions of this act or of a rule or order lawfully made pursuant to this act, or federal law or regulation pertaining to the mortgage lending or mortgage brokering, and has damaged any person by such violation, then the bond shall be forfeited and paid by the surety to the state of Wyoming for the benefit of any person so damaged.

40-23-111. Examinations and investigations.

(a) The commissioner may conduct examinations of any licensee under this act at intervals he deems necessary to determine compliance with this act and other applicable laws, rules and regulations.

(b) The commissioner may at any time investigate the loans or business books and records of any licensee or

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person engaged in mortgage lending or mortgage brokering activities for the purpose of determining compliance with this act or securing information required under this act. For these purposes, the commissioner shall have free and reasonable access to the offices, places of business, books and records of the licensee.

(c) If a licensee's or person's records are located outside this state, the licensee or person shall have the option to make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(d) Each licensee or person subject to examination or investigation under this act shall pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect cost of examinations or investigations conducted pursuant to this section not to exceed one hundred dollars (\$100.00) per hour.

40-23-112. Records; confidentiality of records; exception.

(a) Every licensee shall maintain records in conformity with generally accepted accounting principles in a manner that will enable the commissioner to determine whether the licensee is complying with the provisions of this act. The recordkeeping system of a licensee shall be sufficient if he makes the required information available. The records need not be kept in the place of business where residential mortgage loans are made, if the commissioner is

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given free access to the records wherever located. The records pertaining to any loan shall be retained for the period of twenty-five (25) months from the date of loan closing.

(b) Except as provided in subsection (c) of this section, all information or reports obtained by the commissioner from an applicant or licensee are confidential.

(c) The commissioner may disclose confidential information to mortgage lending or mortgage brokering supervisory agencies in other states or to federal regulatory authorities or to appropriate prosecuting attorneys.

(d) The commissioner may enter into cooperative, coordinating or information sharing agreements with any other supervisory agency or any organization affiliated with or representing one (1) or more mortgage lending or mortgage brokering supervisory agencies with respect to the periodic examination or other supervision of any office in Wyoming of an out-of-state licensee, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his own examinations or investigations.

(e) The commissioner may enter into contracts with any mortgage lending or mortgage brokering supervisory agency having concurrent jurisdiction over a Wyoming licensee pursuant to this act to engage the services of the agency's examiners at a reasonable rate of compensation. Any such contract shall not be subject to the provisions of W.S. 9-2-1016(b).

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(f) This section does not prohibit the commissioner from disclosing to the public a list of persons licensed under this act.

40-23-113. Disclosure of mortgage lender fees.

(a) Within three (3) working days of taking a mortgage loan application and prior to receiving any consideration, other than third party fees, from the borrower, the mortgage lender shall:

(i) Disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Truth-in-Lending Act and its associated regulations, and the federal Real Estate Settlement Procedures Act and its associated regulations;

(ii) If a prepayment penalty may be a condition of the residential mortgage loan offered to a borrower, that fact shall be separately disclosed in writing to the borrower and the borrower shall agree in writing to accept that condition. The disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. The written disclosure shall be in a form prescribed by the commissioner and shall be delivered at the same time the borrower is given the federal Truth-in-Lending Act disclosure.

(b) With the exception of a loan cancellation fee, a licensed mortgage lender shall not require a borrower to pay any fees or charges prior to a residential mortgage loan closing, except:

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(i) Charges actually incurred by the licensee on behalf of the borrower for services which have been rendered by third parties necessary to process the application. These fees may include, but are not limited to, fees for credit reports, flood insurance certifications, property inspections, title insurance commitments, uniform commercial code article 4 lien searches, and appraisals;

(ii) A rate lock in fee; and

(iii) A commitment fee upon approval of the residential mortgage loan.

(c) A loan cancellation fee may be charged and collected by a licensee at any time either prior to the scheduled closing of a residential mortgage loan transaction or subsequent thereto.

(d) Any fees charged under the authority of this section shall be reasonable and customary as to the type and the amount of the fee charged.

40-23-114. Disclosure of mortgage broker fees.

(a) Within three (3) business days of a borrower signing a completed mortgage loan application and before the borrower provides any consideration to the licensee, the licensee shall execute and deliver to the borrower a mortgage brokerage agreement. The mortgage brokerage agreement shall be in writing, signed and dated by both the borrower and the authorized representative of the licensed mortgage broker whose services to the borrower constitute mortgage brokering.

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(b) The mortgage brokerage agreement shall be the only agreement between the borrower and licensee with respect to a single mortgage loan transaction, except that the licensed mortgage broker shall also provide to the borrower disclosure statements necessary to comply with the federal Truth-in-Lending Act and its associated regulations, the federal Real Estate Settlement Procedures Act and its associated regulations, and any other applicable federal and state requirements.

(c) A licensed mortgage broker shall not require a borrower to pay any fees or charges prior to the mortgage loan closing, except charges actually incurred by the licensed mortgage broker on behalf of the borrower for services from third parties necessary to process the mortgage loan application, such as credit reports and appraisals.

(d) A mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the most recent good faith estimate unless:

(i) The need to charge the higher fee was not reasonably foreseeable at the time the good faith estimate was written; and

(ii) The mortgage broker has provided to the borrower, no less than three (3) business days prior to the signing of the mortgage loan closing documents, a clear written explanation of the increase in the fee and the reason for charging a fee that exceeds that which was previously disclosed.

(e) If the fee was originally disclosed as a percentage of the mortgage loan amount, and the dollar

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amount of the fee increases because the mortgage loan amount increases, but the fee as a percentage of the mortgage loan amount does not change, then no redisclosure shall be required unless the fee increased by more than one thousand dollars (\$1,000.00).

40-23-115. Disclosure of loan terms by mortgage broker.

(a) Prior to entering into a written mortgage brokerage agreement or accepting any consideration from the borrower, a mortgage broker shall disclose in writing to any borrower the following information:

(i) That the mortgage broker may not make mortgage loans or issue loan commitments in its own name. The mortgage broker may issue a loan commitment and may furnish a lock-in of the interest rate and program on behalf of the mortgage lender when the mortgage broker has obtained a written or electronically transmitted loan commitment or lock-in for the mortgage loan from the mortgage lender on behalf of the borrower. The loan commitment issued by the mortgage broker to the borrower on behalf of the mortgage lender shall be in the same form and substance as issued by the mortgage lender and shall identify the mortgage lender by name;

(ii) That the mortgage broker cannot guarantee acceptance into any particular mortgage loan program or promise any specific mortgage loan terms or conditions;

(iii) A good faith estimate of the fees to be collected, including a credit report fee, property appraisal fee or any other third party fee;

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(iv) The terms and conditions for obtaining a refund of any fees or arranging for the transfer of third party service work products to another mortgage lender or mortgage broker, if any. The amount of any fees collected in excess of the actual cost shall be returned within sixty (60) days after rejection, withdrawal or closing.

(b) The fact that certain mortgage loan products impose a prepayment penalty on the borrower and the amount of, or the formula for calculating the prepayment penalty, if any, and the terms of the prepayment penalty, if any, shall be disclosed to the borrower as soon as they are known, but no later than the issuance of the commitment, if any, for the mortgage loan product chosen by the borrower.

40-23-116. Trust accounts.

All monies received from a borrower for payment of third party provider services shall be deemed as held in trust immediately upon receipt. All such trust funds shall be deposited, prior to the end of the third business day following receipt of the funds, in a trust account of a federally insured financial institution. All trust account funds collected under this act shall remain on deposit in a noninterest bearing trust account until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Monies maintained in the trust account shall be exempt from execution, attachment or garnishment. A mortgage lender or mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third party provider or for refunds to a borrower.

40-23-117. Prohibited practices.

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(a) No licensee or person required to have a license shall:

(i) Pay compensation to, contract with or employ in any manner, any person engaged in mortgage lending or brokering activities who is not properly licensed unless such person is exempt under W.S. 40-23-105;

(ii) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

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

(iv) Accept any fees at closing which were not previously disclosed fully to the borrower;

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

(vi) Engage in any misrepresentation in connection with a residential mortgage loan;

(vii) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;

(viii) Make any false promises likely to influence or persuade, or pursue a course of misrepresentations and false promises through agents, solicitors, advertising or otherwise;

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(ix) Misrepresent, circumvent or conceal any of the material particulars or the nature thereof, regarding a transaction to which it is a party;

(x) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is delivered to the borrower.

40-23-118. License suspension or revocation.

(a) The commissioner may suspend, not to exceed six (6) months, or revoke a license if the commissioner finds:

(i) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application;

(ii) The licensee violated any provision of this act or any rule or order validly promulgated by the commissioner;

(iii) The licensee is conducting its business in an unsafe or unsound manner;

(iv) The licensee refuses to permit the commissioner to make any examination authorized by this act;

(v) The licensee willfully fails to make any report required by this act;

(vi) The competence, experience, character or general fitness of the licensee indicates that it is not in

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the public interest to permit the licensee to continue to conduct business;

(vii) The bond of the licensee has been revoked;

(viii) The licensee or any partner, officer, director, manager or employee of the licensee has been convicted of a felony or a misdemeanor involving any aspect of the financial services business;

(ix) The licensee or any partner, officer, director, manager or employee of the licensee has had a license substantially equivalent to a license under this act, and issued by another state, denied, revoked or suspended under the laws of that state;

(x) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(b) Notwithstanding any provision of the Wyoming Administrative Procedure Act, if the commissioner finds that probable cause for revocation of a license exists and that enforcement of this act and the public interest require immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days written notice, enter an order suspending the license for not more than thirty (30) days.

(c) The commissioner may, in his discretion, reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or

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suspended if no fact or condition then exists which clearly would justify the commissioner in refusing to grant a license.

40-23-119. Orders to cease and desist.

(a) If the commissioner determines that a violation of this act or of a rule adopted or an order issued under this act by a licensee is likely to cause immediate and irreparable harm to the licensee, its customers or the public as a result of the violation or cause insolvency of the licensee, the commissioner may issue an order requiring the licensee to cease and desist from the violation. The order becomes effective upon service upon the licensee.

(b) If the commissioner determines that a person is conducting mortgage lending or mortgage brokering activities governed under this act without a valid license, the commissioner may issue an order requiring the unlicensed person to cease and desist from mortgage lending or mortgage brokering activities. The order becomes effective upon service upon the unlicensed person.

(c) Before issuing a final cease and desist order under subsections (a) and (b) of this section, the commissioner shall serve notice of intent to issue the order upon the person being ordered to cease and desist. The notice shall be in writing and shall direct the person to discontinue the violations of law and cease and desist mortgage lending or mortgage brokering activities. The notice shall be served by certified mail return receipt requested to the last known address of the person or shall be served as provided by the Wyoming Rules of Civil Procedure. Notice of the order shall include:

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(i) A statement of the grounds for issuing the proposed order, including a citation to the statute or rule involved;

(ii) A statement of the facts in support of the allegations;

(iii) A statement informing the person of the right to a hearing on the order.

(d) In an emergency, the commissioner may petition the district court for the issuance of a temporary restraining order.

(e) An order to cease and desist becomes effective upon service upon the person.

(f) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to the Wyoming Administrative Procedure Act.

(g) A person served with an order to cease and desist for violating this act may petition the district court for a judicial order setting aside, limiting or suspending the enforcement, operation or effectiveness of the order pending the completion of an administrative proceeding pursuant to the Wyoming Administrative Procedure Act.

(h) The commissioner shall commence a contested case proceeding within twenty (20) days after issuing an order to cease and desist.

40-23-120. Consent orders.

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The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this act. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this act or a rule adopted or an order issued under this act has been violated.

40-23-121. Civil penalties.

The commissioner may impose a civil penalty upon a person who violates this act or a rule adopted or an order issued under this act in an amount not to exceed five hundred dollars (\$500.00) per day for each day the violation is outstanding, plus the state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees. Any penalties collected pursuant to this section shall be deposited in the public school fund of the appropriate county as required by article 7, section 5 of the Wyoming constitution.

40-23-122. Criminal penalties.

(a) A person who intentionally makes a false statement, misrepresentation or false certification in a record filed or required to be maintained under this act or who intentionally makes a false entry or omits a material entry in the record is guilty of a felony, punishable by not less than three (3) years imprisonment or a fine of not less than ten thousand dollars (\$10,000.00), or both.

(b) An individual who knowingly engages in any activity for which a license is required under this act, without being licensed under this act is guilty of a felony

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punishable by not less than three (3) years imprisonment or a fine of not less than ten thousand dollars (\$10,000.00), or both.

(c) A person, except an individual, who knowingly engages in any activity for which a license is required under this act, without being licensed under this act is guilty of a misdemeanor punishable by a fine of not less than twenty-five thousand dollars (\$25,000.00).

40-23-123. Hearings.

Except as otherwise provided in W.S. 40-23-108(c) and 40-23-109, the commissioner shall not suspend or revoke a license, issue an order to cease and desist or assess a civil penalty without notice and an opportunity to be heard.

Section 2. There are authorized two (2) additional positions to the department of audit, division of banking for the purposes of implementing this act. There is appropriated to the department of audit, division of banking one hundred seventy-five thousand dollars (\$175,000.00) from the financial institutions administrations account within the earmarked revenue fund for the period beginning with the effective date of this act and ending June 30, 2006. A request of three hundred fifty thousand dollars (\$350,000.00) from the financial institutions administrations account within the earmarked revenue fund shall be included in the department of audit, division of banking's 2007-2008 biennium standard budget request for purposes of continuing funding of this program and these positions.

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Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____
DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk