



Sen. Jacqueline Y. Collins

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LRB098 09990 MGM 44336 a

1 AMENDMENT TO SENATE BILL 1667

2 AMENDMENT NO. _____. Amend Senate Bill 1667 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Residential Mortgage License Act of 1987 is
5 amended by changing Sections 1-3 and 4-2 and adding Section
6 7-15 as follows:

7 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

8 Sec. 1-3. Necessity for License; Scope of Act.

9 (a) No person, partnership, association, corporation or
10 other entity shall engage in the business of brokering,
11 funding, originating, servicing or purchasing of residential
12 mortgage loans without first obtaining a license from the
13 Secretary ~~Commissioner~~ in accordance with the licensing
14 procedure provided in this Article I and such regulations as
15 may be promulgated by the Secretary ~~Commissioner~~. The licensing
16 provisions of this Section shall not apply to any entity

1 engaged solely in commercial mortgage lending or to any person,
2 partnership association, corporation or other entity exempted
3 pursuant to Section 1-4, subsection (d), of this Act or in
4 accordance with regulations promulgated by the Secretary
5 ~~Commissioner~~ hereunder. No provision of this Act shall apply to
6 an exempt person or entity as defined in items (1) and (1.5) of
7 subsection (d) of Section 1-4 of this Act. Notwithstanding
8 anything to the contrary in the preceding sentence, an
9 individual acting as a mortgage loan originator who is not
10 employed by and acting for an entity described in item (1) of
11 subsection (tt) of Section 1-4 of this Act shall be subject to
12 the mortgage loan originator licensing requirements of Article
13 VII of this Act.

14 Effective January 1, 2011, no provision of this Act shall
15 apply to an exempt person or entity as defined in item (1.8) of
16 subsection (d) of Section 1-4 of this Act. Notwithstanding
17 anything to the contrary in the preceding sentence, an
18 individual acting as a mortgage loan originator who is not
19 employed by and acting for an entity described in item (1) of
20 subsection (tt) of Section 1-4 of this Act shall be subject to
21 the mortgage loan originator licensing requirements of Article
22 VII of this Act, and provided that an individual acting as a
23 mortgage loan originator under item (1.8) of subsection (d) of
24 Section 1-4 of this Act shall be further subject to a
25 determination by the U.S. Department of Housing and Urban
26 Development through final rulemaking or other authorized

1 agency determination under the federal Secure and Fair
2 Enforcement for Mortgage Licensing Act of 2008.

3 (a-1) A person who is exempt from licensure pursuant to
4 paragraph (ii) of item (1) of subsection (d) of Section 1-4 of
5 this Act as a federally chartered savings bank that is
6 registered with the Nationwide Mortgage Licensing System and
7 Registry may apply to the Secretary for an exempt company
8 registration for the purpose of sponsoring one or more
9 individuals subject to the mortgage loan originator licensing
10 requirements of Article VII of this Act. Registration with the
11 Division of Banking of the Department shall not affect the
12 exempt status of the applicant.

13 (1) A mortgage loan originator eligible for licensure
14 under this subsection shall (A) be covered under an
15 exclusive written contract with, and originate residential
16 mortgage loans solely on behalf of, that exempt person; and
17 (B) hold a current, valid insurance producer license under
18 Article XXXI of the Illinois Insurance Code.

19 (2) An exempt person shall: (A) fulfill any reporting
20 requirements required by the Nationwide Mortgage Licensing
21 System and Registry or the Secretary; (B) provide a blanket
22 surety bond pursuant to Section 7-12 of this Act covering
23 the activities of all its sponsored mortgage loan
24 originators; (C) reasonably supervise the activities of
25 all its sponsored mortgage loan originators; (D) comply
26 with all rules and orders (including the averments

1 contained in Section 2-4 of this Act as applicable to a
2 non-licensed exempt entity provided for in this Section)
3 that the Secretary deems necessary to ensure compliance
4 with the federal SAFE Act; and (E) pay an annual
5 registration fee established by the Director.

6 (3) The Secretary may deny an exempt company
7 registration to an exempt person or fine, suspend, or
8 revoke an exempt company registration if the Secretary
9 finds one of the following:

10 (A) that the exempt person is not a person of
11 honesty, truthfulness, or good character;

12 (B) that the exempt person violated any applicable
13 law, rule, or order;

14 (C) that the exempt person refused or failed to
15 furnish, within a reasonable time, any information or
16 make any report that may be required by the Secretary;

17 (D) that the exempt person had a final judgment
18 entered against him or her in a civil action on grounds
19 of fraud, deceit, or misrepresentation, and the
20 conduct on which the judgment is based indicates that
21 it would be contrary to the interest of the public to
22 permit the exempt person to manage a loan originator;

23 (E) that the exempt person had an order entered
24 against him or her involving fraud, deceit, or
25 misrepresentation by an administrative agency of this
26 State, the federal government, or any other state or

1 territory of the United States, and the facts relating
2 to the order indicate that it would be contrary to the
3 interest of the public to permit the exempt person to
4 manage a loan originator;

5 (F) that the exempt person made a material
6 misstatement or suppressed or withheld information on
7 the application for an exempt company registration or
8 any document required to be filed with the Secretary;
9 or

10 (G) that the exempt person violated Section 4-5 of
11 this Act.

12 (b) No person, partnership, association, corporation, or
13 other entity except a licensee under this Act or an entity
14 exempt from licensing pursuant to Section 1-4, subsection (d),
15 of this Act shall do any business under any name or title, or
16 circulate or use any advertising or make any representation or
17 give any information to any person, which indicates or
18 reasonably implies activity within the scope of this Act.

19 (c) The Secretary ~~Commissioner~~ may, through the Attorney
20 General, request the circuit court of either Cook or Sangamon
21 County to issue an injunction to restrain any person from
22 violating or continuing to violate any of the foregoing
23 provisions of this Section.

24 (d) When the Secretary ~~Commissioner~~ has reasonable cause to
25 believe that any entity which has not submitted an application
26 for licensure is conducting any of the activities described in

1 subsection (a) hereof, the Secretary ~~Commissioner~~ shall have
2 the power to examine all books and records of the entity and
3 any additional documentation necessary in order to determine
4 whether such entity should become licensed under this Act.

5 (d-1) The Secretary ~~Commissioner~~ may issue orders against
6 any person if the Secretary ~~Commissioner~~ has reasonable cause
7 to believe that an unsafe, unsound, or unlawful practice has
8 occurred, is occurring, or is about to occur, if any person has
9 violated, is violating, or is about to violate any law, rule,
10 or written agreement with the Secretary ~~Commissioner~~, or for
11 the purposes of administering the provisions of this Act and
12 any rule adopted in accordance with this Act.

13 (e) Any person, partnership, association, corporation or
14 other entity who violates any provision of this Section commits
15 a business offense and shall be fined an amount not to exceed
16 \$25,000.

17 (f) Each person, partnership, association, corporation or
18 other entity conducting activities regulated by this Act shall
19 be issued one license. Each office, place of business or
20 location at which a residential mortgage licensee conducts any
21 part of his or her business must be recorded with the Secretary
22 ~~Commissioner~~ pursuant to Section 2-8 of this Act.

23 (g) Licensees under this Act shall solicit, broker, fund,
24 originate, service and purchase residential mortgage loans
25 only in conformity with the provisions of this Act and such
26 rules and regulations as may be promulgated by the Secretary

1 ~~Commissioner.~~

2 (h) This Act applies to all entities doing business in
3 Illinois as residential mortgage bankers, as defined by "An Act
4 to provide for the regulation of mortgage bankers", approved
5 September 15, 1977, as amended, regardless of whether licensed
6 under that or any prior Act. Any existing residential mortgage
7 lender or residential mortgage broker in Illinois whether or
8 not previously licensed, must operate in accordance with this
9 Act.

10 (i) This Act is a successor Act to and a continuance of the
11 regulation of residential mortgage bankers provided in, "An Act
12 to provide for the regulation of mortgage bankers", approved
13 September 15, 1977, as amended.

14 Entities and persons subject to the predecessor Act shall
15 be subject to this Act from and after its effective date.

16 (Source: P.A. 96-112, eff. 7-31-09; 96-1216, eff. 1-1-11;
17 97-143, eff. 7-14-11.)

18 (205 ILCS 635/4-2) (from Ch. 17, par. 2324-2)

19 Sec. 4-2. Examination; prohibited activities.

20 (a) The business affairs of a licensee under this Act shall
21 be examined for compliance with this Act as often as the
22 Secretary ~~Commissioner~~ deems necessary and proper. The
23 Secretary ~~Commissioner~~ shall promulgate rules with respect to
24 the frequency and manner of examination. The Secretary
25 ~~Commissioner~~ shall appoint a suitable person to perform such

1 examination. The Secretary ~~Commissioner~~ and his appointees may
2 examine the entire books, records, documents, and operations of
3 each licensee and its subsidiary, affiliate, or agent, and may
4 examine any of the licensee's or its subsidiary's, affiliate's,
5 or agent's officers, directors, employees and agents under
6 oath. For purposes of this Section, "agent" includes service
7 providers such as accountants, closing services providers,
8 providers of outsourced services such as call centers,
9 marketing consultants, and loan processors, even if exempt from
10 licensure under this Act. This Section does not apply to an
11 attorney's privileged work product or communications.

12 (b) The Secretary ~~Commissioner~~ shall prepare a
13 sufficiently detailed report of each licensee's examination,
14 shall issue a copy of such report to each licensee's
15 principals, officers, or directors and shall take appropriate
16 steps to ensure correction of violations of this Act.

17 (c) Affiliates of a licensee shall be subject to
18 examination by the Secretary ~~Commissioner~~ on the same terms as
19 the licensee, but only when reports from, or examination of a
20 licensee provides for documented evidence of unlawful activity
21 between a licensee and affiliate benefiting, affecting or
22 deriving from the activities regulated by this Act.

23 (d) The expenses of any examination of the licensee and
24 affiliates shall be borne by the licensee and assessed by the
25 Secretary ~~Commissioner~~ as established by regulation.

26 (e) Upon completion of the examination, the Secretary

1 ~~Commissioner~~ shall issue a report to the licensee. All
2 confidential supervisory information, including the
3 examination report and the work papers of the report, shall
4 belong to the Secretary's ~~Commissioner's~~ office and may not be
5 disclosed to anyone other than the licensee, law enforcement
6 officials or other regulatory agencies that have an appropriate
7 regulatory interest as determined by the Secretary
8 ~~Commissioner~~, or to a party presenting a lawful subpoena to the
9 Office of the Secretary ~~Commissioner~~. The Secretary
10 ~~Commissioner~~ may immediately appeal to the court of
11 jurisdiction the disclosure of such confidential supervisory
12 information and seek a stay of the subpoena pending the outcome
13 of the appeal. Reports required of licensees by the Secretary
14 ~~Commissioner~~ under this Act and results of examinations
15 performed by the Secretary ~~Commissioner~~ under this Act shall be
16 the property of only the Secretary ~~Commissioner~~, but may be
17 shared with the licensee. Access under this Act to the books
18 and records of each licensee shall be limited to the Secretary
19 ~~Commissioner~~ and his agents as provided in this Act and to the
20 licensee and its authorized agents and designees. No other
21 person shall have access to the books and records of a licensee
22 under this Act. Any person upon whom a demand for production of
23 confidential supervisory information is made, whether by
24 subpoena, order, or other judicial or administrative process,
25 must withhold production of the confidential supervisory
26 information and must notify the Secretary ~~Commissioner~~ of the

1 demand, at which time the Secretary ~~Commissioner~~ is authorized
2 to intervene for the purpose of enforcing the limitations of
3 this Section or seeking the withdrawal or termination of the
4 attempt to compel production of the confidential supervisory
5 information. The Secretary ~~Commissioner~~ may impose any
6 conditions and limitations on the disclosure of confidential
7 supervisory information that are necessary to protect the
8 confidentiality of such information. Except as authorized by
9 the Secretary ~~Commissioner~~, no person obtaining access to
10 confidential supervisory information may make a copy of the
11 confidential supervisory information. The Secretary
12 ~~Commissioner~~ may condition a decision to disclose confidential
13 supervisory information on entry of a protective order by the
14 court or administrative tribunal presiding in the particular
15 case or on a written agreement of confidentiality. In a case in
16 which a protective order or agreement has already been entered
17 between parties other than the Secretary ~~Commissioner~~, the
18 Secretary ~~Commissioner~~ may nevertheless condition approval for
19 release of confidential supervisory information upon the
20 inclusion of additional or amended provisions in the protective
21 order. The Secretary ~~Commissioner~~ may authorize a party who
22 obtained the records for use in one case to provide them to
23 another party in another case, subject to any conditions that
24 the Secretary ~~Commissioner~~ may impose on either or both
25 parties. The requestor shall promptly notify other parties to a
26 case of the release of confidential supervisory information

1 obtained and, upon entry of a protective order, shall provide
2 copies of confidential supervisory information to the other
3 parties.

4 (f) The Secretary ~~Commissioner~~, deputy commissioners, and
5 employees of the Office of Banks and Real Estate shall be
6 subject to the restrictions provided in Section 2.5 of the
7 Division of Banking Act including, without limitation, the
8 restrictions on (i) owning shares of stock or holding any other
9 equity interest in an entity regulated under this Act or in any
10 corporation or company that owns or controls an entity
11 regulated under this Act; (ii) being an officer, director,
12 employee, or agent of an entity regulated under this Act; and
13 (iii) obtaining a loan or accepting a gratuity from an entity
14 regulated under this Act.

15 (g) After the initial examination for those licensees whose
16 only mortgage activity is servicing fewer than 1,000 Illinois
17 residential loans, the examination required in subsection (a)
18 may be waived upon submission of a letter from the licensee's
19 independent certified auditor that the licensee serviced fewer
20 than 1,000 Illinois residential loans during the year in which
21 the audit was performed.

22 (h) An exempt entity under subsection (a-1) of Section 1-3
23 of this Act shall cooperate with the Secretary in the
24 examination and investigation of its sponsored and licensed
25 mortgage loan originators at a frequency determined by the
26 Secretary. The exempt entity under subsection (a-1) of Section

1 1-3 of this Act shall cooperate with the Secretary in providing
2 mortgage loan originator documents and access to mortgage loan
3 originator offices for the purposes of examination and
4 investigation. The activities of the exempt entity shall not
5 relieve a mortgage loan originator of his or her individual
6 requirements under Section 7-15 of this Act. An exempt entity
7 under subsection (a-1) of Section 1-3 of this Act shall pay to
8 the Department any examination fees invoiced by the Secretary
9 for examination of its sponsored mortgage loan originators. The
10 Secretary shall have the authority to make oral or written
11 inquiries regarding the management of an exempt entity under
12 subsection (a-1) of Section 1-3 of this Act and it shall be the
13 duty of the exempt entity to promptly reply by telephone, in
14 writing, or other means to the inquiry.

15 (Source: P.A. 96-112, eff. 7-31-09; 96-1365, eff. 7-28-10.)

16 (205 ILCS 635/7-15 new)

17 Sec. 7-15. Examination and investigation of certain
18 mortgage loan originators. The activities requiring a licensee
19 of a mortgage loan originator that are sponsored by an exempt
20 entity under subsection (a-1) of Section 1-3 of this Act are
21 subject to examination and investigation by the Secretary.
22 Mortgage loan originators sponsored by an exempt entity shall
23 keep and maintain records of his or her loan activities for a
24 period of 36 months and shall produce records on demand by the
25 Secretary. The records shall include a loan log or loan

1 production log as approved by the Secretary and any loan
2 application entered, prepared, or created through or from the
3 mortgage loan originator's activities. Mortgage loan
4 originators sponsored by an exempt entity shall provide access,
5 upon the Secretary's demand, to his or her offices for the
6 purposes of the Department's examination and investigation.
7 The Secretary shall determine the manner and frequency at which
8 the Department shall conduct examinations of the mortgage loan
9 originators. Mortgage loan originators sponsored by an exempt
10 entity shall cooperate at all times with the Department
11 pursuant to requirements of this Section and shall be subject
12 to penalties under Section 7-11 of this Act for failure to
13 comply.

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.".