

HOUSE BILL No. 2568

AN ACT concerning financial institutions; relating to the Kansas mortgage business act; authorizing certain mortgage business to be conducted at remote locations; establishing procedures and requirements for license and registration renewal or reinstatement; adjusting surety bond requirements; providing for evidence of solvency and net worth; requiring notice to commissioner when adding or closing any branch office; amending K.S.A. 9-2215 and K.S.A. 2021 Supp. 9-2201, 9-2203, 9-2204, 9-2205, 9-2208 and 9-2211 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2021 Supp. 9-2201 is hereby amended to read as follows: 9-2201. As used in this act:

~~(a) "Application" means the submission of a consumer's financial information, including the consumer's name, income and social security number to obtain a credit report, the property address, an estimate of the value of the property and the mortgage loan amount sought, for the purpose of obtaining an extension of credit.~~

~~(b) "Bona fide office" means an applicant's or licensee's place of business with an office that:~~

- ~~(1) Is located in this state;~~
- ~~(2) is not located in a personal residence;~~
- ~~(3) has regular hours of operation;~~
- ~~(4) is accessible to the public;~~
- ~~(5) is leased or owned by the licensee and serves as an office for the transaction of the licensee's mortgage business;~~
- ~~(6) is separate from any office of another registrant; and~~
- ~~(7) is accessible to all of the licensee's books, records and documents.~~

~~(e) "Branch office" means a place of business, other than a principal place of business, where mortgage business is conducted and which is licensed as required by this act the mortgage company maintains a physical location for the purpose of conducting mortgage business with the public.~~

~~(b)~~ "Commissioner" means the state bank commissioner or designee, who shall be the deputy commissioner of the consumer and mortgage lending division of the office of the state bank commissioner.

~~(c)~~ "Individual" means a human being.

~~(d)~~ "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.

~~(e)~~ "Licensee" means a person who is licensed by the commissioner as a mortgage company.

~~(f)~~ "Loan originator" means an individual:

- (1) Who engages in mortgage business on behalf of a single mortgage company;
- (2) whose conduct of mortgage business is the responsibility of the licensee;
- (3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and
- (4) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of mortgage loan applications or other documents, quoting loan rates or terms or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.

~~(g)~~ "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.

(1) For purposes of this subsection, the term "clerical or support duties" may include subsequent to the receipt of ~~an~~ a mortgage loan application:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates

or terms.

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a loan originator.

(~~f~~)(h) "Mortgage business" means engaging in, or holding out to the public as willing to engage in, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, the business of making, originating, servicing, soliciting, placing, negotiating, acquiring, selling, arranging for others, or holding the rights to or offering to solicit, place, negotiate, acquire, sell or arrange for others, mortgage loans in the primary market.

(~~k~~)(i) "Mortgage company" means a person engaged in mortgage business ~~from a principal place of business or branch office, which has been licensed as required by this act.~~

(~~f~~)(j) "Mortgage loan" means a loan or agreement to extend credit made to one or more individuals which is secured by a first or subordinate mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien, except as provided for in K.S.A. 60-1101 through 60-1110, and amendments thereto, upon any lot intended for residential purposes or a one-to-four family dwelling as defined in 15 U.S.C. § 1602(w), located in this state, occupied or intended to be occupied for residential purposes by the owner, including the renewal or refinancing of any such loan.

(~~m~~)(k) "*Mortgage loan application*" means the submission of a consumer's financial information, including, but not limited to, the consumer's name, income and social security number, to obtain a credit report, the property address, an estimate of the value of the property and the mortgage loan amount sought for the purpose of obtaining an extension of credit.

(l) "Mortgage servicer" means any person engaged in mortgage servicing.

(~~n~~)(m) "Mortgage servicing" means collecting payment, remitting payment for another or the right to collect or remit payment of any of the following: Principal; interest; tax; insurance; or other payment under a mortgage loan.

(~~o~~)(n) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(~~p~~)(o) "Not-for-profit" means a business entity that is granted tax exempt status by the internal revenue service.

(~~q~~)(p) "Person" means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.

(~~r~~)(q) "Primary market" means the market wherein mortgage business is conducted including activities conducted by any person who assumes or accepts any mortgage business responsibilities of the original parties to the transaction.

(~~s~~)(r) "Principal place of business" means a ~~licensed~~ place of business where mortgage business is conducted, which has been designated by a licensee as the primary headquarters from which all mortgage business and administrative activities are managed and directed.

(~~t~~)(s) "Promotional items" means pens, pencils, hats and other such novelty items.

(~~u~~)(t) "Registrant" means any individual who holds a valid registration to conduct mortgage business in this state as a loan originator.

(u) "*Remote location*" means a location other than the principal place of business or a branch office where a licensed mortgage company's employee or independent contractor is authorized by such company to engage in mortgage business. A remote location is not considered a branch office.

(v) "Unique identifier" means a number or other identifier

assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 2. K.S.A. 2021 Supp. 9-2203 is hereby amended to read as follows: 9-2203. (a) Mortgage business shall only be conducted in this state ~~at or from~~ by a *licensed* mortgage company ~~licensed by the commissioner as required by this act~~. A licensee shall be responsible for all mortgage business conducted on ~~their~~ *such licensee's* behalf by *any person, including loan originators or other, employees or independent contractors*.

(b) Mortgage business involving loan origination shall only be conducted in this state by an individual who has first been registered with the commissioner as a loan originator as required by this act and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry, if operational at the time of registration.

(c) ~~Loan origination shall only be conducted at or from a mortgage company and a~~ registrant shall only engage in mortgage business on behalf of one *licensed* mortgage company.

(d) *Mortgage business may be conducted at a remote location, if:*

(1) *The licensed mortgage company's employees or independent contractors do not meet with the public at a personal residence;*

(2) *no physical business records are maintained at the remote location;*

(3) *the licensed mortgage company has written policies and procedures for working at a remote location and such company supervises and enforces such policies and procedures;*

(4) *the licensed mortgage company maintains the computer system and customer information in accordance with the company's information technology security plan and all state and federal laws;*

(5) *any device used to engage in mortgage business has appropriate security, encryption and device management controls to ensure the security and confidentiality of customer information as required by rules and regulations adopted by the commissioner;*

(6) *the licensed mortgage company's employees or independent contractors take reasonable precautions to protect confidential information in accordance with state and federal laws; and*

(7) *the licensed mortgage company annually reviews and certifies that the employees or independent contractors engaged in mortgage business at remote locations meet the requirements of this section. Upon request, a licensee shall provide written documentation of such licensee's review to the commissioner.*

(e) Nothing under this act shall require a licensee to obtain any other license under any other act for the sole purpose of conducting non-depository mortgage business.

~~(e)~~(f) Any person who willfully or knowingly violates any of the provisions of this act, any rule and regulation adopted or order issued under this act commits a severity level 7 nonperson felony. A second or subsequent conviction of this act, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

~~(f)~~(g) No prosecution for any crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

~~(g)~~(h) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

Sec. 3. K.S.A. 2021 Supp. 9-2204 is hereby amended to read as follows: 9-2204. (a) Any person required to be licensed as a mortgage company pursuant to this act shall submit to the commissioner ~~a separate~~ an application for the ~~principal place of business and each branch office~~ mortgage company on forms prescribed and provided by the commissioner. The application ~~or applications~~ shall contain information the commissioner deems necessary to adequately identify:

(1) The nature of the mortgage business to be conducted, principal place of business address and each branch office address;

(2) the identity, character and qualifications of an individual applicant;

(3) the identity, character and qualifications of the loan originators, owners, officers, directors, members, partners and employees of the applicant;

(4) the name under which the applicant intends to conduct business; and

(5) other information the commissioner requires to evaluate the financial responsibility and condition, character, qualifications and fitness of the applicant and compliance with the provisions of this act.

(b) Any individual required to register as a loan originator pursuant to this act shall submit to the commissioner an application for registration on forms prescribed and provided by the commissioner. The application shall contain information the commissioner deems necessary to adequately identify the location where the individual engages in mortgage business activities, the licensee for whom the registrant will conduct mortgage business and other information the commissioner requires to evaluate the condition, character, qualifications, and fitness of the applicant and compliance with the provisions of this act.

(c) Each application shall be accompanied by a nonrefundable fee of not less than \$50, which may be increased by rules and regulations pursuant to K.S.A. 9-2209, and amendments thereto.

(d) The commissioner shall consider an application for a license or registration abandoned if the applicant fails to complete the application within 60 days after the commissioner provides the applicant with written notice of the incomplete application. An applicant whose application is abandoned under this section may reapply to obtain a license or registration and shall pay the fee set forth in subsection (c) upon such application.

(e) An application shall be approved, and a nonassignable license or registration shall be issued to the applicant ~~provided if:~~

(1) The commissioner has received the complete application and fee required by this section;

(2) the commissioner determines the proposed name under which an applicant for a mortgage company license intends to conduct business is not misleading or otherwise deceptive; and

(3) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

Sec. 4. K.S.A. 2021 Supp. 9-2205 is hereby amended to read as follows: 9-2205. (a) A license or registration shall become effective as of the date specified in writing by the commissioner.

~~(b) A license shall be renewed annually by filing with the commissioner, at least 30 days prior to the expiration of the license, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information contained in the applicant's original license application or prior renewal applications. Each license and registration shall expire on December 31 of each year. A license or registration shall be renewed by filing with the commissioner a complete renewal application and nonrefundable renewal fee by December 1 of each year.~~

(c) A registration shall be renewed annually by filing with the commissioner, at least 30 days prior to the expiration of the registration, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information contained in the applicant's original registration application or prior renewal applications, including the completion of any continuing education requirements. *Renewal applications received after December 1 of each year and incomplete renewal applications as of December 1 of each year may be assessed a late fee.*

~~(d) Each renewal application shall be accompanied by a nonrefundable fee which shall be established by rules and regulations pursuant to K.S.A. 9-2209, and amendments thereto. An expired license or registration may be reinstated through the last day of February of each year, with the same force and effect as if the license or registration had not expired and had at all times remained in full force and effect, by filing a reinstatement application and paying the appropriate application and late fees.~~

(e) Any renewal *or reinstatement* application received by the commissioner after the ~~expiration date of the current license or registration~~ *last day of February of each year* shall be treated as an original application and shall be subject to all reporting and fee requirements contained in K.S.A. 9-2204, and amendments thereto.

(f) *The commissioner may designate late fees paid under this section for consumer education to be expended for such purpose as directed by the commissioner.*

Sec. 5. K.S.A. 2021 Supp. 9-2208 is hereby amended to read as follows: 9-2208. (a) Each licensee shall make available ~~the evidence of licensure of each licensed location~~ in a way that reasonably assures recognition by consumers and members of the general public.

(b) Prior to entering into any contract for the provision of services or prior to the licensee receiving any compensation or promise of compensation for a mortgage loan the licensee shall acquire from the consumer a signed acknowledgment containing such information as the commissioner may prescribe by rule and regulation. The signed acknowledgment shall be retained by the licensee and a copy shall be provided to the consumer.

(c) All solicitations and published advertisements concerning mortgage business directed at Kansas residents, including those on the internet or by other electronic means, shall contain the name and license number or unique identifier of the licensee on record with the commissioner. Each licensee shall maintain a record of all solicitations or advertisements for a period of 36 months. For the purpose of this subsection, "advertising" does not include business cards or promotional items.

(d) No solicitation or advertisement shall contain false, misleading or deceptive information, or indicate or imply that the interest rates or charges stated are "recommended," "approved," "set" or "established" by the state of Kansas.

(e) No licensee or registrant shall conduct mortgage business in this state using any name other than the name or names stated on their license or registration.

Sec. 6. K.S.A. 2021 Supp. 9-2211 is hereby amended to read as follows: 9-2211. (a) Each applicant or licensee ~~who maintains a bona fide office~~ shall file with the commissioner a surety bond in the amount of not less than ~~\$50,000~~ *\$100,000*, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the following requirements:

(1) The bond shall be payable to the office of the state bank commissioner and shall be in an amount established by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto;

(2) the terms of the bond shall provide that it may not be terminated without 30 days prior written notice to the commissioner, ~~provided~~ *except* that such termination shall not affect the surety's liability for violations of the Kansas mortgage business act occurring prior to the effective date of cancellation and principal and surety shall be and remain liable for a period of two years from the date of any action or inaction of principal that gives rise to a claim under the bond; and

(3) the bond shall be available for the recovery of expenses, fines and fees levied by the commissioner under this act, and for losses or damages ~~which~~ *that* are determined by the commissioner to have been incurred by any borrower or consumer as a result of the applicant's or licensee's failure to comply with the requirements of this act.

(b) Each applicant or licensee ~~who does not maintain a bona fide office~~ shall ~~comply with both of the following:~~

~~(1) File with the commissioner a surety bond in the amount of not less than \$100,000, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the requirements set forth in subsections (a)(1), (a)(2) and (a)(3) of this section; and~~

~~(2) submit evidence that establishes, to the commissioner's satisfaction, that the applicant or licensee is solvent and shall at all~~

times maintain a ~~minimum~~ *positive* net worth of \$50,000. Evidence of *solvency and* net worth shall include the submission of a balance sheet of the applicant or a consolidated financial statement of the entity that owns or controls the applicant ~~accompanied by a written statement by an independent certified public accountant attesting that the balance sheet or the consolidated financial statement has been reviewed in accordance with generally accepted accounting principles. Should the applicant or licensee choose a different accounting system other than generally accepted accounting principles, the burden to demonstrate that the accounting principles meet or exceed the generally accepted accounting principles shall be on the applicant or licensee using the alternate accounting principle method.~~

Sec. 7. K.S.A. 9-2215 is hereby amended to read as follows: 9-2215. (a) A licensee shall provide written notice to the commissioner within 10 business days of the occurrence of any of the following events:

(1) The closing or relocation of the principal place of business or ~~any~~ *the addition or closing of any* branch office;

(2) a change in the licensee's name or legal entity status; or

(3) the addition or loss of any loan originator, owner, officer, partner or director.

(b) The commissioner may request additional information concerning any written notice received pursuant to subsection (a) and charge a reasonable fee for any action required by the commissioner as a result of such notice and additional information.

Sec. 8. K.S.A. 9-2215 and K.S.A. 2021 Supp. 9-2201, 9-2203, 9-2204, 9-2205, 9-2208 and 9-2211 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE

President of the Senate.

Secretary of the Senate.

APPROVED

Governor.