



Substitute Senate Bill No. 228

Public Act No. 06-45

AN ACT CONCERNING MORTGAGE PRACTICES AND LICENSING PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 36a-488 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) The commissioner shall not issue a license as a first mortgage lender, a first mortgage correspondent lender or a first mortgage broker to any person unless such person meets the following tangible net worth and experience requirements, as applicable: (A) The minimum tangible net worth requirement for a first mortgage lender shall be two hundred fifty thousand dollars and the minimum tangible net worth requirement for a first mortgage correspondent lender and a first mortgage broker shall be twenty-five thousand dollars, and (B) a mortgage lender shall have, at the location for which the license is sought, a person with supervisory authority over the lending activities who has at least three years' experience in the mortgage lending business within the five years immediately preceding the application for the license and a first mortgage broker shall have, at the location for which the license is sought, a person with supervisory authority over the brokerage activities who has at least three years' experience in the mortgage lending or mortgage brokerage business within the five

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years immediately preceding the application for the license, provided such experience requirements shall not apply to any person whose license is renewed effective October 1, 2002.

(2) Each licensee shall maintain the net worth required by this subsection and shall promptly notify the commissioner if such licensee's net worth falls below the net worth required by this subsection.

(b) The commissioner may issue a first mortgage lender license, a first mortgage correspondent lender license, or a first mortgage broker license. Each first mortgage lender licensee may also act as a first mortgage correspondent lender and a first mortgage broker, and each first mortgage correspondent lender licensee may also act as a first mortgage broker. An application for a license or renewal of such license shall be made under oath and on a form provided by the commissioner. The application shall include: (1) The type of license sought; (2) the name and address of the applicant; (3) the location for which the license is sought; (4) the name and address of each member, partner, officer, director, authorized agent and shareholder owning ten per cent or more of the outstanding stock, as applicable; (5) if the applicant is a trust or the lead lender in one or more participation loans, the name and address of each trustee or lead lender and each beneficiary of the trust or other participant lenders in all outstanding participation loans; (6) a financial statement as of a date not more than six months prior to the filing of the application which reflects tangible net worth, and if such financial statement is unaudited, the proprietor, general partner, or duly authorized officer, trustee or member shall swear to its accuracy under oath before a notary public; (7) evidence that the person with supervisory authority over the lending or brokerage activities at the location for which the license is sought meets the experience required by subsection (a) of this section; (8) an application for registration of each originator or prospective originator

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of the applicant at such location; and (9) such other information pertaining to the applicant, the applicant's background, the background of its principals and employees, and the applicant's activities as the commissioner may require.

(c) An application for registration of an originator or renewal of such registration shall be made on a form provided by the commissioner.

(d) It shall be considered a violation of section 36a-53a if a licensee files an application for registration of an originator with knowledge that such application contains a material misstatement by an originator.

Sec. 2. Section 36a-489 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) If the commissioner finds, upon the filing of an application for a license, that the applicant meets the requirements of subsection (a) of section 36a-488, as amended by this act, and that the financial responsibility, character, reputation, integrity and general fitness of the applicant and of the partners thereof if the applicant is a partnership, of the members if the applicant is a limited liability company or association, and of the officers, directors and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated soundly and efficiently, in the public interest and consistent with the purposes of sections 36a-485 to 36a-498a, inclusive, as amended by this act, the commissioner may thereupon issue the applicant the license. If the commissioner fails to make such findings, or if the commissioner finds that the applicant has made a material misstatement in [the] such application or in the application for registration of an originator, or files an application for registration of an originator with knowledge that such application contains a material misstatement by an originator, the commissioner shall not issue a

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license, and shall notify the applicant of the denial and the reasons for such denial. Any denial of an application by the commissioner shall, when applicable, be subject to the provisions of section 46a-80.

(b) Upon the filing of an application for registration, the commissioner shall register the originator named in the application unless the commissioner finds that such originator or the applicant has made a material misstatement in the application or that the financial responsibility, character, reputation, integrity and general fitness of [the] such originator [named in the application,] are not such as to warrant belief that granting such registration would be in the public interest and consistent with the purposes of sections 36a-485 to 36a-498a, inclusive, as amended by this act. If the commissioner denies registration, the commissioner shall notify [the] such originator [named in the application] and the applicant filing the application of the denial and the reasons for such denial. Any denial of an application by the commissioner shall, when applicable, be subject to the provisions of section 46a-80. A registration shall remain in force and effect until it has been surrendered, revoked, suspended or expires in accordance with the provisions of sections 36a-485 to 36a-498a, inclusive, as amended by this act.

Sec. 3. Subdivision (2) of subsection (a) of section 36a-491 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(2) A licensee filing an application for registration of an originator shall, at the time of making such application, pay to the commissioner a registration fee of one hundred dollars for each such originator. [provided if such application is filed not earlier than one year before the date the license of the applicant will expire, the applicant shall pay to the commissioner a registration fee of fifty dollars for such originator.] Each registration shall expire at such time as the licensee's license expires unless such registration is renewed. Such licensee shall file an

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application for renewal of the registration and pay to the commissioner the appropriate registration fee as provided in this subsection for the succeeding two years, commencing October first.

Sec. 4. Subdivision (2) of subsection (a) of section 36a-494 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(2) The commissioner may suspend, revoke or refuse to renew any registration of an originator, in accordance with the provisions of section 36a-51, for any reason which would be sufficient grounds for the commissioner to deny an application for a registration under sections 36a-485 to 36a-498a, inclusive, as amended by this act, or if the commissioner finds that the registrant has committed any fraud, misappropriated funds, [or] misrepresented any of the material particulars of any first mortgage loan transaction or has violated any of the provisions of this title or of any regulations adopted pursuant to such title or any other law or regulation applicable to the conduct of such registrant's business.

Sec. 5. Section 36a-498 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Except as provided in subsection (c) of this section, every advance fee paid or given, directly or indirectly, to a mortgage lender or first mortgage broker required to be licensed pursuant to sections 36a-485 to 36a-498a, inclusive, as amended by this act, shall be refundable.

(b) No originator required to be registered pursuant to sections 36a-485 to 36a-498a, inclusive, as amended by this act, shall accept payment of any advance fee except an advance fee on behalf of a licensee. Nothing in this subsection shall be construed as prohibiting the licensee from paying an originator all or part of an advance fee,

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provided such advance fee paid is not refundable under this section.

(c) Subsection (a) of this section shall not apply if: (1) The person providing the advance fee and the mortgage lender or first mortgage broker agree in writing that the advance fee shall not be refundable, in whole or in part; and (2) the written agreement complies in all respects with the provisions of subsection (d) of this section.

(d) An agreement under subsection (c) of this section shall meet all of the following requirements to be valid and enforceable: (1) The agreement shall be dated, signed by both parties, and be executed prior to the payment of any advance fee; (2) the agreement shall expressly state the total advance fee required to be paid and any amount of the advance fee that shall not be refundable; (3) the agreement shall clearly and conspicuously state any conditions under which the advance fee will be retained by the licensee; (4) the term "nonrefundable" shall be used to describe each advance fee or portion thereof to which the term is applicable, and shall appear in boldface type in the agreement each time it is used; and (5) the form of the agreement shall (A) be separate from any other forms, contracts, or applications utilized by the licensee, (B) contain a heading in a size equal to at least ten-point boldface type that shall title the form "AGREEMENT CONCERNING NONREFUNDABILITY OF ADVANCE FEE", (C) provide for a duplicate copy which shall be given to the person paying the advance fee at the time of payment of the advance fee, and (D) include such other specifications as the commissioner may by regulation prescribe.

(e) An agreement under subsection (c) of this section that does not meet the requirements of subsection (d) of this section shall be voidable at the election of the person paying the advance fee.

(f) (1) No mortgage lender or first mortgage broker required to be licensed pursuant to sections 36a-485 to 36a-498a, inclusive, as

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amended by this act, shall enter into an agreement with or otherwise require any person to pay the mortgage lender or first mortgage broker for any fee, commission or other valuable consideration lost as a result of such person failing to consummate a first mortgage loan, provided the mortgage lender or first mortgage broker may collect such fee, commission or consideration as an advance fee subject to the requirements of this section.

(2) No first mortgage broker required to be licensed pursuant to sections 36a-485 to 36a-498a, inclusive, as amended by this act, shall enter into an agreement with or otherwise require any person to pay the first mortgage broker any fee, commission or other valuable consideration for the prepayment of the principal of a first mortgage loan by such person before the date on which the principal is due.

Sec. 6. Section 36a-498a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

No licensee under section 36a-489, as amended by this act, and no person exempt from licensure under subdivisions (1), ~~(2)~~ (5) and (6) of section 36a-487 making a first mortgage loan shall charge, impose or cause to be paid, directly or indirectly, prepaid finance charges that exceed in the aggregate, the greater of five per cent of the principal amount of the loan or two thousand dollars. If the proceeds of the loan are used to refinance an existing loan, the aggregate of the prepaid finance charges for the current refinancing and any previous financings by such licensee or exempt person or affiliate of such licensee or exempt person within two years of the current refinancing shall not exceed the greater of five per cent of the principal amount of the initial loan or two thousand dollars. The provisions of this section shall not prohibit such licensee or exempt person from charging, imposing or causing to be paid, directly or indirectly, prepaid finance charges in addition to those permitted by this section in connection with any additional proceeds received by the borrower in the

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refinancing, provided such prepaid finance charges on the additional proceeds shall not exceed five per cent of the additional proceeds. For purposes of this section, "additional proceeds" has the meaning given to that term in subdivision (3) of section 36a-746e and "prepaid finance charge" has the meaning given to that term in subdivision (7) of section 36a-746a.

Sec. 7. Section 36a-513 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) The commissioner shall not issue a license as a secondary mortgage lender, a secondary mortgage correspondent lender or a secondary mortgage broker to any person unless such person meets the following tangible net worth and experience requirements, as applicable: (A) The minimum tangible net worth requirement for a secondary mortgage lender shall be one hundred thousand dollars and the minimum tangible net worth requirement for a secondary mortgage correspondent lender and a secondary mortgage broker shall be twenty-five thousand dollars, and (B) a mortgage lender shall have at the location for which the license is sought, a person with supervisory authority over the lending activities who has had at least three years' experience in the mortgage lending business within the five years immediately preceding the application for the license, and a secondary mortgage broker shall have, at the location for which the license is sought, a person with supervisory authority over the brokerage activities who has at least three years' experience in the mortgage lending or mortgage brokerage business within the five years immediately preceding the application for the license, provided such experience requirements shall not apply to any person whose license is renewed effective July 1, 2003.

(2) Each licensee shall maintain the net worth required by this subsection and shall promptly notify the commissioner if such licensee's net worth falls below the net worth required by this

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subsection.

(b) The commissioner may issue a secondary mortgage lender license, a secondary mortgage correspondent lender license or a secondary mortgage broker license. Each secondary mortgage lender licensee may also act as a secondary mortgage correspondent lender and a secondary mortgage broker, and each secondary mortgage correspondent lender licensee may also act as a secondary mortgage broker. Any application for a license or renewal of such license shall be under oath and on a form provided by the commissioner. The application shall include: (1) The type of license sought; (2) the name and address of the applicant; (3) the location for which the license is sought; (4) the name and address of each member, partner, officer, director, authorized agent and shareholder owning ten per cent or more of the outstanding stock, as applicable; (5) if the applicant is a trust or the lead lender in one or more participation loans, the name and address of each trustee or lead lender and each beneficiary of the trust or other participant lenders in all outstanding participation loans; (6) a financial statement as of a date not more than six months prior to the filing of the application which reflects tangible net worth, and if such financial statement is unaudited, the proprietor, general partner, or duly authorized officer, trustee or member shall swear to its accuracy under oath before a notary public; (7) evidence that the person with supervisory authority over the lending or brokerage activities at the location for which the license is sought meets the experience required by subsection (a) of this section; (8) an application for registration of each originator or prospective originator of the applicant at such location; and (9) such other information pertaining to the applicant, the applicant's background, the background of its principals and employees and the applicant's activities as the commissioner may require.

(c) If the commissioner finds, upon the filing of an application for a

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license, that the applicant meets the requirements of subsection (a) of this section, and that the financial responsibility, character, reputation, integrity and general fitness of the applicant and of the partners thereof if the applicant is a partnership, of the members if the applicant is a limited liability company or association, and of the officers, directors and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated soundly and efficiently, in the public interest and consistent with the purposes of sections 36a-510 to 36a-524, inclusive, as amended by this act, the commissioner may thereupon issue the applicant the license. If the commissioner fails to make such findings, or if the commissioner finds that the applicant made any material misstatement in [the] such application or in the application for registration of an originator, or files an application for registration of an originator with knowledge that such application contains a material misstatement by an originator, the commissioner shall not issue a license, and shall notify the applicant of the denial and the reasons for such denial. Any denial of an application by the commissioner shall, when applicable, be subject to the provisions of section 46a-80.

(d) An application for registration or renewal of such registration shall be made on a form provided by the commissioner.

(e) Upon the filing of an application for registration, the commissioner shall register the originator named in the application unless the commissioner finds that such originator or the applicant has made any material misstatement in the application or that the financial responsibility, character, reputation, integrity and general fitness of [the] such originator, [named in the application,] are not such as to warrant belief that granting such registration would be in the public interest and consistent with the purposes of sections 36a-510 to 36a-524, inclusive, as amended by this act. If the commissioner denies registration, the commissioner shall notify [the] such originator

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[named in the application] and the applicant filing the application of the denial and the reasons for such denial. Any denial of an application by the commissioner shall, when applicable, be subject to the provisions of section 46a-80.

(f) It shall be considered a violation of section 36a-53a if a licensee files an application for registration of an originator with knowledge that such application contains a material misstatement by an originator.

Sec. 8. Subsection (b) of section 36a-514 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2006*):

(b) A licensee filing an application for registration of an originator shall, at the time of making such application pay to the commissioner a registration fee of one hundred dollars for each such originator. [, provided if such application is filed not earlier than one year before the date the license of the applicant will expire, the applicant shall pay to the commissioner a registration fee of fifty dollars for each originator.] Each registration shall expire at such time as the licensee's license expires unless such registration is renewed. Such licensee shall file an application for renewal of the registration and pay to the commissioner the appropriate registration fee as provided in this subsection for the succeeding two years, commencing October first.

Sec. 9. Subdivision (2) of subsection (a) of section 36a-517 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(2) The commissioner may suspend, revoke or refuse to renew any registration of an originator, in accordance with the provisions of section 36a-51, for any reason which would be sufficient grounds for the commissioner to deny an application for a registration under

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sections 36a-510 to 36a-524, inclusive, as amended by this act, or if the commissioner finds that the registrant has committed any fraud, misappropriated funds, [or] misrepresented any of the material particulars of any secondary mortgage loan transaction or has violated any of the provisions of this title or of any regulations adopted pursuant to such title or any other law or regulation applicable to the conduct of such registrant's business.

Sec. 10. Section 36a-521 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No person engaged in the secondary mortgage loan business in this state as a mortgage lender, or a secondary mortgage broker, including any licensee under sections 36a-510 to 36a-524, inclusive, as amended by this act, and any person who is exempt from licensing under section 36a-512, may (1) charge, impose or cause to be paid, directly or indirectly, in connection with any secondary mortgage loan transaction, prepaid finance charges that exceed in the aggregate eight per cent of the principal amount of the loan, or (2) include in the loan agreement under which prepaid finance charges have been assessed any provision which permits the mortgage lender to demand payment of the entire loan balance prior to the scheduled maturity, except that such loan agreement may contain a provision which permits the mortgage lender to demand payment of the entire loan balance if any scheduled installment is in default for more than sixty days or if any condition of default set forth in the mortgage note exists. For purposes of this section, "prepaid finance charge" has the meaning given to that term in section 36a-746a.

(b) Any mortgage lender who fails to comply with the provisions of this section shall be liable to the borrower in an amount equal to the sum of: (1) The amount by which the total of all prepaid finance charges exceeds eight per cent of the principal amount of the loan; (2) eight per cent of the principal amount of the loan or two thousand five

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hundred dollars, whichever is less; and (3) the costs incurred by the borrower in bringing an action under this section, including reasonable attorney's fees, as determined by the court, provided no such mortgage lender shall be liable for more than the amount specified in this subsection in a secondary mortgage loan transaction involving more than one borrower.

(c) Except as provided in subsection (e) of this section, every advance fee paid or given, directly or indirectly, to a mortgage lender or secondary mortgage broker required to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, as amended by this act, shall be refundable.

(d) No originator required to be registered pursuant to sections 36a-510 to 36a-524, inclusive, as amended by this act, shall accept payment of any advance fee except an advance fee on behalf of a licensee. Nothing in this subsection shall be construed as prohibiting the licensee from paying an originator all or part of an advance fee, provided such advance fee paid is not refundable under this section.

(e) Subsection (c) of this section shall not apply if: (1) The person providing the advance fee and the licensee agree, in writing, that the advance fee shall not be refundable, in whole or in part; and (2) the written agreement complies in all respects with the provisions of subsection (f) of this section.

(f) An agreement under subsection (e) of this section shall meet all of the following requirements to be valid and enforceable: (1) The agreement shall be dated, signed by both parties, and be executed prior to the payment of any advance fee; (2) the agreement shall expressly state the total advance fee required to be paid and any amount of the advance fee that shall not be refundable; (3) the agreement shall clearly and conspicuously state any conditions under which the advance fee will be retained by the licensee; (4) the term

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"nonrefundable" shall be used to describe each advance fee or portion thereof to which the term is applicable and shall appear in boldface type in the agreement each time it is used; and (5) the form of the agreement shall (A) be separate from any other forms, contracts or applications utilized by the licensee, (B) contain a heading printed in a size equal to at least ten-point boldface type that shall title the form "AGREEMENT CONCERNING NONREFUNDABILITY OF ADVANCE FEE", (C) provide for a duplicate copy, which shall be given to the person paying the advance fee at the time of payment of the advance fee, and (D) include such other specifications as the commissioner may by regulation prescribe.

(g) An agreement under subsection (e) of this section that does not meet the requirements of subsection (f) of this section shall be voidable at the election of the person paying the advance fee.

(h) (1) No mortgage lender or secondary mortgage broker required to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, as amended by this act, shall enter into an agreement with or otherwise require any person to pay the mortgage lender or secondary mortgage broker for any fee, commission or other valuable consideration lost as a result of such person failing to consummate a secondary mortgage loan, provided the mortgage lender or secondary mortgage broker may collect such fee, commission or consideration as an advance fee subject to the requirements of this section.

(2) No secondary mortgage broker required to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, as amended by this act, shall enter into an agreement with or otherwise require any person to pay the secondary mortgage broker any fee, commission or other valuable consideration for the prepayment of the principal of a secondary mortgage loan by such person before the date on which the principal is due.

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