

SENATE BILL No. 18

By Committee on Financial Institutions and Insurance

1-12

1 AN ACT concerning financial institutions; relating to mortgage business;
2 pertaining to the Kansas mortgage business act; amending K.S.A. 9-
3 2204 and K.S.A. 2016 Supp. 9-2203, 9-2206, 9-2211 and 9-2216a and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 9-2203 is hereby amended to read as
8 follows: 9-2203. (a) Mortgage business shall only be conducted in this
9 state at or from a mortgage company licensed by the commissioner as
10 required by this act. A licensee shall be responsible for all mortgage
11 business conducted on their behalf by loan originators or other employees.

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

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

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

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

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

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

1 Sec. 2. K.S.A. 9-2204 is hereby amended to read as follows: 9-2204.

2 (a) Any person required to be licensed as a mortgage company pursuant to
3 this act shall submit to the commissioner a separate application for the
4 principal place of business and each branch office on forms prescribed and
5 provided by the commissioner. The application or applications shall
6 contain information the commissioner deems necessary to adequately
7 identify:

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

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

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

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

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

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

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

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

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

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

43 (2) the commissioner determines the proposed name under which an

1 applicant for a mortgage company license intends to conduct business is
2 not misleading or otherwise deceptive; and

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

8 Sec. 3. K.S.A. 2016 Supp. 9-2206 is hereby amended to read as
9 follows: 9-2206. (a) If the commissioner fails to issue a license or
10 registration within 60 days or grant a renewal within 30 days after an
11 application is deemed complete by the commissioner, the applicant may
12 make written request for a hearing. The commissioner shall conduct a
13 hearing in accordance with the Kansas administrative procedure act.

14 (b) *If an application is considered abandoned pursuant to K.S.A. 9-
15 2204, and amendments thereto, an applicant may make written request for
16 a hearing. The commissioner shall conduct a hearing in accordance with
17 the Kansas administrative procedure act.*

18 Sec. 4. K.S.A. 2016 Supp. 9-2211 is hereby amended to read as
19 follows: 9-2211. (a) Each applicant or licensee who maintains a bona fide
20 office shall file with the commissioner a surety bond in the amount of not
21 less than \$50,000, in a form acceptable to the commissioner, issued by an
22 insurance company authorized to conduct business in this state, securing
23 the applicant's or licensee's faithful performance of all duties and
24 obligations of a licensee meeting the following requirements:

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

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

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

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

43 (1) File with the commissioner a surety bond in the amount of not

1 less than \$100,000, in a form acceptable to the commissioner, issued by an
2 insurance company authorized to conduct business in this state, securing
3 the applicant's or licensee's faithful performance of all duties and
4 obligations of a licensee meeting the requirements set forth in ~~paragraphs~~
5 *subsections (a)(1), (a)(2) and (a)(3) of this act section; and*

6 (2) submit evidence that establishes, to the commissioner's
7 satisfaction, that the applicant or licensee shall at all times maintain a
8 minimum net worth of \$50,000. Evidence of net worth shall include the
9 submission of a balance sheet of the applicant or a consolidated financial
10 statement of the entity that owns or controls the applicant accompanied by
11 a written statement by an independent certified public accountant attesting
12 that the balance sheet or the consolidated financial statement has been
13 reviewed in accordance with generally accepted accounting principles.
14 *Should the applicant or licensee choose a different accounting system*
15 *other than generally accepted accounting principles, the burden to*
16 *demonstrate that the accounting principles meet or exceed the generally*
17 *accepted accounting principles shall be on the applicant or licensee using*
18 *the alternate accounting principle method.*

19 Sec. 5. K.S.A. 2016 Supp. 9-2216a is hereby amended to read as
20 follows: 9-2216a. (a) -Each licensee shall annually, on or before April 1,
21 file a written report with the commissioner containing the information that
22 the commissioner may reasonably require concerning the licensee's
23 business and operations during the preceding calendar year. The report
24 shall be made in the form prescribed by the commissioner, which may
25 include reports filed with the nationwide mortgage licensing system and
26 registry. Any licensee who fails to file the report required by this section
27 with the commissioner by April 1 shall be subject to a late penalty of \$100
28 for each day after April 1 the report is delinquent, but in no event shall the
29 aggregate of late penalties exceed \$5,000. The commissioner may relieve
30 any licensee from the payment of any penalty, in whole or in part, for good
31 cause. The filing of the annual written report required under this section
32 shall satisfy any other reports required of a licensee under this act.

33 (b) *Information contained in the annual report shall be confidential*
34 *and may be published only in composite form. The provisions of this*
35 *subsection shall expire on July 1, 2022, unless the legislature reviews and*
36 *reenacts this provision prior to July 1, 2022.*

37 Sec. 6. K.S.A. 9-2204 and K.S.A. 2016 Supp. 9-2203, 9-2206, 9-2211
38 and 9-2216a are hereby repealed.

39 Sec. 7. This act shall take effect and be in force from and after its
40 publication in the statute book.