

HOUSE BILL No. 2568

By Committee on Financial Institutions and Rural Development

1-27

1 AN ACT concerning financial institutions; relating to the Kansas mortgage
2 business act; authorizing certain mortgage business to be conducted at
3 remote locations; establishing procedures and requirements for license
4 and registration renewal or reinstatement; adjusting surety bond
5 requirements; providing for evidence of solvency and net worth;
6 requiring notice to commissioner when adding or closing any branch
7 office; amending K.S.A. 9-2215 and K.S.A. 2021 Supp. 9-2201, 9-
8 2203, 9-2204, 9-2205, 9-2208 and 9-2211 and repealing the existing
9 sections.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

21 ~~(1) Is located in this state;~~

22 ~~(2) is not located in a personal residence;~~

23 ~~(3) has regular hours of operation;~~

24 ~~(4) is accessible to the public;~~

25 ~~(5) is leased or owned by the licensee and serves as an office for the~~
26 ~~transaction of the licensee's mortgage business;~~

27 ~~(6) is separate from any office of another registrant; and~~

28 ~~(7) is accessible to all of the licensee's books, records and documents.~~

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

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

- 1 ~~(e)~~(c) "Individual" means a human being.
- 2 ~~(f)~~(d) "License" means a license issued by the commissioner to
3 engage in mortgage business as a mortgage company.
- 4 ~~(g)~~(e) "Licensee" means a person who is licensed by the
5 commissioner as a mortgage company.
- 6 ~~(h)~~(f) "Loan originator" means an individual:
- 7 (1) Who engages in mortgage business on behalf of a single mortgage
8 company;
- 9 (2) whose conduct of mortgage business is the responsibility of the
10 licensee;
- 11 (3) who takes a residential mortgage loan application or offers or
12 negotiates terms of a residential mortgage loan for compensation or gain or
13 in the expectation of compensation or gain; and
- 14 (4) whose job responsibilities include contact with borrowers during
15 the loan origination process, which can include soliciting, negotiating,
16 acquiring, arranging or making mortgage loans for others, obtaining
17 personal or financial information, assisting with the preparation of
18 *mortgage* loan applications or other documents, quoting loan rates or terms
19 or providing required disclosures. It does not include any individual
20 engaged solely as a loan processor or underwriter.
- 21 ~~(i)~~(g) "Loan processor or underwriter" means an individual who
22 performs clerical or support duties as an employee at the direction and
23 subject to the supervision and instruction of a person registered or exempt
24 from registration under this act.
- 25 (1) For purposes of this subsection, the term "clerical or support
26 duties" may include subsequent to the receipt of ~~an~~ *a mortgage loan*
27 application:
- 28 (A) The receipt, collection, distribution and analysis of information
29 common for the processing or underwriting of a residential mortgage loan;
30 and
- 31 (B) communicating with a consumer to obtain the information
32 necessary for the processing or underwriting of a loan, to the extent that
33 such communication does not include offering or negotiating loan rates or
34 terms or counseling consumers about residential mortgage loan rates or
35 terms.
- 36 (2) An individual engaging solely in loan processor or underwriter
37 activities shall not represent to the public, through advertising or other
38 means of communicating or providing information including the use of
39 business cards, stationery, brochures, signs, rate lists or other promotional
40 items, that such individual can or will perform any of the activities of a
41 loan originator.
- 42 ~~(j)~~(h) "Mortgage business" means engaging in, or holding out to the
43 public as willing to engage in, for compensation or gain, or in the

1 expectation of compensation or gain, directly or indirectly, the business of
2 making, originating, servicing, soliciting, placing, negotiating, acquiring,
3 selling, arranging for others, or holding the rights to or offering to solicit,
4 place, negotiate, acquire, sell or arrange for others, mortgage loans in the
5 primary market.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (v) "Unique identifier" means a number or other identifier assigned
 15 by protocols established by the nationwide mortgage licensing system and
 16 registry.

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

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

29 ~~Loan origination shall only be conducted at or from a mortgage~~
 30 ~~company and a~~ A registrant shall only engage in mortgage business on
 31 behalf of one *licensed* mortgage company.

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

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

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

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

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

43 (5) *any device used to engage in mortgage business has appropriate*

1 security, encryption and device management controls to ensure the
2 security and confidentiality of customer information as required by rules
3 and regulations adopted by the commissioner;

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

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

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

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

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

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

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

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

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

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

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

1 and

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

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

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

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

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

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

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

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

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

39 ~~(b) A license shall be renewed annually by filing with the~~
40 ~~commissioner, at least 30 days prior to the expiration of the license, a~~
41 ~~renewal application, containing information the commissioner requires to~~
42 ~~determine the existence of material changes from the information~~
43 ~~contained in the applicant's original license application or prior renewal~~

1 ~~applications~~ Each license and registration shall expire on December 31 of
2 each year. A license or registration shall be renewed by filing with the
3 commissioner a complete renewal application and nonrefundable renewal
4 fee by December 1 of each year.

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

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

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

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

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

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

41 (c) All solicitations and published advertisements concerning
42 mortgage business directed at Kansas residents, including those on the
43 internet or by other electronic means, shall contain the name and license

1 number or unique identifier of the licensee on record with the
2 commissioner. Each licensee shall maintain a record of all solicitations or
3 advertisements for a period of 36 months. For the purpose of this
4 subsection, "advertising" does not include business cards or promotional
5 items.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 8. K.S.A. 9-2215 and K.S.A. 2021 Supp. 9-2201, 9-2203, 9-
28 2204, 9-2205, 9-2208 and 9-2211 are hereby repealed.

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