



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB5542

by Rep. Nick Sauer

#### SYNOPSIS AS INTRODUCED:

205 ILCS 635/2-2  
205 ILCS 635/2-4 from Ch. 17, par. 2322-4  
205 ILCS 635/4-8.3  
205 ILCS 635/5-9  
205 ILCS 635/4-8 rep.

Amends the Residential Mortgage License Act of 1987. Provides for a list of specified activities that constitute violations of the Act (rather than a list of required averments that must be attached to an application for a license under the Act). Provides that a licensee filing a Mortgage Call Report is not required to file a report of applicable annual activities with the Secretary of Financial and Professional Regulation. Provides that specified licensee disclosures do not apply to any licensee providing notices of changes in loan terms pursuant to the federal Consumer Financial Protection Bureau's Know Before You Owe mortgage disclosure procedure (rather than excluding licensees limited to solicit residential mortgage loan applications as approved by the Secretary of Financial and Professional Regulation). Makes conforming changes. Repeals provisions concerning a requirement that the Secretary of Financial and Professional Regulation conduct, as part of an examination of each licensee, a review of the licensee's loan delinquency data. Replaces "Commissioner" with "Secretary" in order to update references to the Secretary of Financial and Professional Regulation. Effective immediately.

LRB100 17500 XWW 32669 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Residential Mortgage License Act of 1987 is  
5 amended by changing Sections 2-2, 2-4, 4-8.3, and 5-9 as  
6 follows:

7 (205 ILCS 635/2-2)

8 Sec. 2-2. Application process; investigation; fee.

9 (a) The Secretary shall issue a license upon completion of  
10 all of the following:

11 (1) The filing of an application for license with the  
12 Director or the Nationwide Mortgage Licensing System and  
13 Registry as approved by the Director.

14 (2) The filing with the Secretary of a listing of  
15 judgments entered against, and bankruptcy petitions by,  
16 the license applicant for the preceding 10 years.

17 (3) The payment, in certified funds, of investigation  
18 and application fees, the total of which shall be in an  
19 amount equal to \$2,700 annually.

20 (4) Except for a broker applying to renew a license,  
21 the filing of an audited balance sheet including all  
22 footnotes prepared by a certified public accountant in  
23 accordance with generally accepted accounting principles

1 and generally accepted auditing standards which evidences  
2 that the applicant meets the net worth requirements of  
3 Section 3-5. Notwithstanding the requirements of this  
4 subsection, an applicant that is a subsidiary may submit  
5 audited consolidated financial statements of its parent,  
6 intermediary parent, or ultimate parent as long as the  
7 consolidated statements are supported by consolidating  
8 statements which include the applicant's financial  
9 statement. If the consolidating statements are unaudited,  
10 the applicant's chief financial officer shall attest to the  
11 applicant's financial statements disclosed in the  
12 consolidating statements.

13 (5) The filing of proof satisfactory to the Secretary  
14 ~~Commissioner~~ that the applicant, the members thereof if the  
15 applicant is a partnership or association, the members or  
16 managers thereof that retain any authority or  
17 responsibility under the operating agreement if the  
18 applicant is a limited liability company, or the officers  
19 thereof if the applicant is a corporation have 3 years  
20 experience preceding application in real estate finance.  
21 Instead of this requirement, the applicant and the  
22 applicant's officers or members, as applicable, may  
23 satisfactorily complete a program of education in real  
24 estate finance and fair lending, as approved by the  
25 Secretary ~~Commissioner~~, prior to receiving the initial  
26 license. The Secretary ~~Commissioner~~ shall adopt ~~promulgate~~

1 rules regarding proof of experience requirements and  
2 educational requirements and the satisfactory completion  
3 of those requirements. The Secretary ~~Commissioner~~ may  
4 establish by rule a list of duly licensed professionals and  
5 others who may be exempt from this requirement.

6 (6) An investigation of the application ~~averments~~  
7 ~~required by Section 2-4~~, which investigation must allow the  
8 Secretary ~~Commissioner~~ to issue positive findings stating  
9 that the financial responsibility, experience, character,  
10 and general fitness of the license applicant and of the  
11 members thereof if the license applicant is a partnership  
12 or association, of the officers and directors thereof if  
13 the license applicant is a corporation, and of the managers  
14 and members that retain any authority or responsibility  
15 under the operating agreement if the license applicant is a  
16 limited liability company are such as to command the  
17 confidence of the community and to warrant belief that the  
18 business will be operated honestly, fairly and efficiently  
19 within the purpose of this Act. If the Secretary  
20 ~~Commissioner~~ shall not so find, he or she shall not issue  
21 such license, and he or she shall notify the license  
22 applicant of the denial.

23 The Secretary ~~Commissioner~~ may impose conditions on a  
24 license if the Secretary ~~Commissioner~~ determines that the  
25 conditions are necessary or appropriate. These conditions  
26 shall be imposed in writing and shall continue in effect for

1 the period prescribed by the Secretary ~~Commissioner~~.

2 (b) All licenses shall be issued to the license applicant.

3 Upon receipt of such license, a residential mortgage  
4 licensee shall be authorized to engage in the business  
5 regulated by this Act. Such license shall remain in full force  
6 and effect until it expires without renewal, is surrendered by  
7 the licensee or revoked or suspended as hereinafter provided.

8 (Source: P.A. 98-1081, eff. 1-1-15; 99-15, eff. 1-1-16.)

9 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

10 Sec. 2-4. Prohibited acts and practices for licensees.  
11 ~~Averments of Licensee. It is a violation of this Act for a~~  
12 ~~licensee subject to this Act to~~ Each application for license  
13 ~~shall be accompanied by the following averments stating that~~  
14 ~~the applicant:~~

15 (a) fail to ~~will~~ maintain at least one full service  
16 office within the State of Illinois if required to do so  
17 pursuant to Section 3-4 of this Act;

18 (b) fail to ~~will~~ maintain staff reasonably adequate to  
19 meet the requirements of Section 3-4 of this Act;

20 (c) fail to ~~will~~ keep and maintain for 36 months the  
21 same written records as required by the federal Equal  
22 Credit Opportunity Act, and any other information required  
23 by regulations of the Secretary ~~Commissioner~~ regarding any  
24 home mortgage in the course of the conduct of its  
25 residential mortgage business;

1           (d) fail to ~~Will~~ file with the Secretary ~~Commissioner~~  
2 or Nationwide Mortgage Licensing System and Registry as  
3 applicable, when due, any report or reports which it is  
4 required to file under any of the provisions of this Act;

5           (e) engage ~~Will not engage~~, whether as principal or  
6 agent, in the practice of rejecting residential mortgage  
7 applications without reasonable cause, or varying terms or  
8 application procedures without reasonable cause, for home  
9 mortgages on real estate within any specific geographic  
10 area from the terms or procedures generally provided by the  
11 licensee within other geographic areas of the State;

12           (f) engage ~~Will not engage~~ in fraudulent home mortgage  
13 underwriting practices;

14           (g) make ~~Will not make~~ payment, whether directly or  
15 indirectly, of any kind to any in house or fee appraiser of  
16 any government or private money lending agency with which  
17 an application for a home mortgage has been filed for the  
18 purpose of influencing the independent judgment of the  
19 appraiser with respect to the value of any real estate  
20 which is to be covered by such home mortgage;

21           (h) fail to file ~~Has filed~~ tax returns (State and  
22 Federal) for the past 3 years or filed with the Secretary  
23 ~~Commissioner~~ an accountant's or attorney's statement as to  
24 why no return was filed;

25           (i) engage ~~Will not engage~~ in any discrimination or  
26 redlining activities prohibited by Section 3-8 of this Act;

1           (j) knowingly ~~Will not knowingly~~ make any false  
2 promises likely to influence or persuade, or pursue a  
3 course of misrepresentation and false promises through  
4 agents, solicitors, advertising or otherwise;

5           (k) knowingly ~~Will not knowingly~~ misrepresent,  
6 circumvent or conceal, through whatever subterfuge or  
7 device, any of the material particulars or the nature  
8 thereof, regarding a transaction to which it is a party to  
9 the injury of another party thereto;

10          (l) fail to ~~will~~ disburse funds in accordance with its  
11 agreements;

12          (m) commit ~~Has not committed~~ a crime against the law of  
13 this State, any other state or of the United States,  
14 involving moral turpitude, fraudulent or dishonest  
15 dealing, and that no final judgment has been entered  
16 against it in a civil action upon grounds of fraud,  
17 misrepresentation or deceit which has not been previously  
18 reported to the Secretary ~~Commissioner~~;

19          (n) fail to ~~will~~ account or deliver to the owner upon  
20 request any personal property such as money, fund, deposit,  
21 check, draft, mortgage, other document or thing of value  
22 which it is not in law or equity entitled to retain under  
23 the circumstances;

24          (o) engage ~~Has not engaged~~ in any conduct which would  
25 be cause for denial of a license;

26          (p) become ~~Has not become~~ insolvent;

1           (q) submit ~~Has not submitted~~ an application for a  
2 license under this Act which contains a material  
3 misstatement;

4           (r) demonstrate ~~Has not demonstrated~~ by course of  
5 conduct, negligence or incompetence in performing any act  
6 for which it is required to hold a license under this Act;

7           (s) fail to ~~Will~~ advise the Secretary ~~Commissioner~~ in  
8 writing, or the Nationwide Mortgage Licensing System and  
9 Registry, as applicable, of any changes to the information  
10 submitted on the most recent application for license or  
11 averments of record within 30 days of said change. The  
12 written notice must be signed in the same form as the  
13 application for license being amended;

14           (t) fail to ~~Will~~ comply with the provisions of this  
15 Act, or with any lawful order, rule or regulation made or  
16 issued under the provisions of this Act;

17           (u) fail to ~~Will~~ submit to periodic examination by the  
18 Secretary ~~Commissioner~~ as required by this Act;

19           (v) fail to ~~Will~~ advise the Secretary ~~Commissioner~~ in  
20 writing of judgments entered against, and bankruptcy  
21 petitions by, the license applicant within 5 days of  
22 occurrence;

23           (w) fail to ~~Will~~ advise the Secretary ~~Commissioner~~ in  
24 writing within 30 days of any request made to a licensee  
25 under this Act to repurchase a loan in a manner that  
26 completely and clearly identifies to whom the request was



1 made, the loans involved, and the reason therefor;

2 (x) fail to ~~Will~~ advise the Secretary ~~Commissioner~~ in  
3 writing within 30 days of any request from any entity to  
4 repurchase a loan in a manner that completely and clearly  
5 identifies to whom the request was made, the loans  
6 involved, and the reason for the request;

7 (y) fail to ~~Will~~ at all times act in a manner  
8 consistent with subsections (a) and (b) of Section 1-2 of  
9 this Act;

10 (z) knowingly ~~Will not knowingly~~ hire or employ a ~~loan~~  
11 ~~originator who is not registered, or~~ mortgage loan  
12 originator who is not licensed, with the Secretary  
13 ~~Commissioner~~ as required under ~~Section 7-1 or~~ Section 7-1A,  
14 ~~as applicable,~~ of this Act;

15 (aa) charge ~~Will not charge~~ or collect advance payments  
16 from borrowers or homeowners for engaging in loan  
17 modification; or ~~and~~

18 (bb) structure ~~Will not structure~~ activities or  
19 contracts to evade provisions of this Act.

20 A licensee who fails to ~~fulfill obligations of an averment,~~  
21 ~~to~~ comply with this Section ~~averments made,~~ or otherwise  
22 violates any of the provisions of ~~averments made under~~ this  
23 Section shall be subject to the penalties in Section 4-5 of  
24 this Act.

25 (Source: P.A. 97-891, eff. 8-3-12; 98-1081, eff. 1-1-15.)

1 (205 ILCS 635/4-8.3)

2 Sec. 4-8.3. Annual report ~~of mortgage brokerage and~~  
3 ~~servicing activity~~. On or before March 1 of each year or the  
4 date selected for Mortgage Call Reports under Section 4-9.1 of  
5 this Act, each licensee shall file a report with the Secretary  
6 ~~Commissioner~~ that discloses ~~shall disclose~~ such information as  
7 the Secretary ~~Commissioner~~ requires. A licensee filing a  
8 Mortgage Call Report is not required to file an annual report.  
9 Exempt entities as defined in subsection (d) of Section 1-4  
10 shall not file the annual report of mortgage and servicing  
11 activity required by this Section.

12 (Source: P.A. 96-112, eff. 7-31-09.)

13 (205 ILCS 635/5-9)

14 Sec. 5-9. Notice of change in loan terms.

15 (a) No licensee may fail to do either of the following:

16 (1) Provide timely notice to the borrower of any  
17 material change in the terms of the residential mortgage  
18 loan prior to the closing of the loan. For purposes of this  
19 Section, a "material change means" any of the following:

20 (A) A change in the type of loan being offered,  
21 such as a fixed or variable rate loan or a loan with a  
22 balloon payment.

23 (B) A change in the term of the loan, as reflected  
24 in the number of monthly payments due before a final  
25 payment is scheduled to be made.

1           (C) An increase in the interest rate of more than  
2           0.15%, or an equivalent increase in the amount of  
3           discount points charged.

4           (D) An increase in the regular monthly payment of  
5           principal and interest of more than 5%.

6           (E) A change regarding the requirement or amount of  
7           escrow of taxes or insurance.

8           (F) A change regarding the requirement or payment,  
9           or both, of private mortgage insurance.

10          (2) Timely inform the borrower if any fees payable by  
11          the borrower to the licensee increase by more than 10% or  
12          \$100, whichever is greater.

13          (b) The disclosures required by this Section shall be  
14          deemed timely if the licensee provides the borrower with the  
15          revised information not later than 3 days after learning of the  
16          change or 24 hours before the residential mortgage loan is  
17          closed, whichever is earlier. If the licensee discloses a  
18          material change more than the 3 days after learning of the  
19          change but still 24 hours before the residential mortgage loan  
20          is closed, it will not be liable for penalties or forfeitures  
21          if the licensee cures in time for the borrower to avoid any  
22          damage.

23          (c) If an increase in the total amount of the fee to be  
24          paid by the borrower to the broker is not disclosed in  
25          accordance with this Section, the broker shall refund to the  
26          borrower the amount by which the fee was increased. If the fee

1 is financed into the residential mortgage loan, the broker  
2 shall also refund to the borrower the interest charged to  
3 finance the fee.

4 (d) The requirements of this Section do not apply to a  
5 licensee providing a notice of change in loan terms pursuant to  
6 the federal Consumer Financial Protection Bureau's Know Before  
7 You Owe mortgage disclosure procedure pursuant to the federal  
8 Truth in Lending Act and amendments promulgated under 12 CFR  
9 1026 and the federal Real Estate Settlement Procedures Act and  
10 amendments promulgated under 12 CFR 1024. ~~Licensees limited to~~  
11 ~~soliciting residential mortgage loan applications as approved~~  
12 ~~by the Director under Title 38, Section 1050.2115(c)(1) of the~~  
13 ~~Illinois Administrative Code are not required to provide the~~  
14 ~~disclosures under this Section as long as the solicitor does~~  
15 ~~not discuss the terms and conditions with the potential~~  
16 ~~borrower.~~

17 (Source: P.A. 95-691, eff. 6-1-08.)

18 (205 ILCS 635/4-8 rep.)

19 Section 10. The Residential Mortgage License Act of 1987 is  
20 amended by repealing Section 4-8.

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law.