



Rep. Nick Sauer

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1 AMENDMENT TO HOUSE BILL 5542

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5542 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Residential Mortgage License Act of 1987 is  
5 amended by changing Sections 2-2, 2-4, 4-8, 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.

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

4           (4) Except for a broker applying to renew a license,  
5 the filing of an audited balance sheet including all  
6 footnotes prepared by a certified public accountant in  
7 accordance with generally accepted accounting principles  
8 and generally accepted auditing standards which evidences  
9 that the applicant meets the net worth requirements of  
10 Section 3-5. Notwithstanding the requirements of this  
11 subsection, an applicant that is a subsidiary may submit  
12 audited consolidated financial statements of its parent,  
13 intermediary parent, or ultimate parent as long as the  
14 consolidated statements are supported by consolidating  
15 statements which include the applicant's financial  
16 statement. If the consolidating statements are unaudited,  
17 the applicant's chief financial officer shall attest to the  
18 applicant's financial statements disclosed in the  
19 consolidating statements.

20           (5) The filing of proof satisfactory to the Secretary  
21 ~~Commissioner~~ that the applicant, the members thereof if the  
22 applicant is a partnership or association, the members or  
23 managers thereof that retain any authority or  
24 responsibility under the operating agreement if the  
25 applicant is a limited liability company, or the officers  
26 thereof if the applicant is a corporation have 3 years

1 experience preceding application in real estate finance.  
2 Instead of this requirement, the applicant and the  
3 applicant's officers or members, as applicable, may  
4 satisfactorily complete a program of education in real  
5 estate finance and fair lending, as approved by the  
6 Secretary Commissioner, prior to receiving the initial  
7 license. The Secretary Commissioner shall adopt ~~promulgate~~  
8 rules regarding proof of experience requirements and  
9 educational requirements and the satisfactory completion  
10 of those requirements. The Secretary Commissioner may  
11 establish by rule a list of duly licensed professionals and  
12 others who may be exempt from this requirement.

13 (6) An investigation of the application ~~averments~~  
14 ~~required by Section 2-4~~, which investigation must allow the  
15 Secretary Commissioner to issue positive findings stating  
16 that the financial responsibility, experience, character,  
17 and general fitness of the license applicant and of the  
18 members thereof if the license applicant is a partnership  
19 or association, of the officers and directors thereof if  
20 the license applicant is a corporation, and of the managers  
21 and members that retain any authority or responsibility  
22 under the operating agreement if the license applicant is a  
23 limited liability company are such as to command the  
24 confidence of the community and to warrant belief that the  
25 business will be operated honestly, fairly and efficiently  
26 within the purpose of this Act. If the Secretary

1 ~~Commissioner~~ shall not so find, he or she shall not issue  
2 such license, and he or she shall notify the license  
3 applicant of the denial.

4 The Secretary ~~Commissioner~~ may impose conditions on a  
5 license if the Secretary ~~Commissioner~~ determines that the  
6 conditions are necessary or appropriate. These conditions  
7 shall be imposed in writing and shall continue in effect for  
8 the period prescribed by the Secretary ~~Commissioner~~.

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

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

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

16 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

17 Sec. 2-4. Prohibited acts and practices for licensees.  
18 ~~Averments of Licensee. It is a violation of this Act for a~~  
19 licensee subject to this Act to ~~Each application for license~~  
20 ~~shall be accompanied by the following averments stating that~~  
21 ~~the applicant:~~

22 (a) fail to ~~Will~~ maintain at least one full service  
23 office within the State of Illinois if required to do so  
24 pursuant to Section 3-4 of this Act;

25 (b) fail to ~~Will~~ maintain staff reasonably adequate to

1 meet the requirements of Section 3-4 of this Act;

2 (c) fail to ~~Will~~ keep and maintain for 36 months the  
3 same written records as required by the federal Equal  
4 Credit Opportunity Act, and any other information required  
5 by regulations of the Secretary ~~Commissioner~~ regarding any  
6 home mortgage in the course of the conduct of its  
7 residential mortgage business;

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

12 (e) engage ~~Will not engage~~, whether as principal or  
13 agent, in the practice of rejecting residential mortgage  
14 applications without reasonable cause, or varying terms or  
15 application procedures without reasonable cause, for home  
16 mortgages on real estate within any specific geographic  
17 area from the terms or procedures generally provided by the  
18 licensee within other geographic areas of the State;

19 (f) engage ~~Will not engage~~ in fraudulent home mortgage  
20 underwriting practices;

21 (g) make ~~Will not make~~ payment, whether directly or  
22 indirectly, of any kind to any in house or fee appraiser of  
23 any government or private money lending agency with which  
24 an application for a home mortgage has been filed for the  
25 purpose of influencing the independent judgment of the  
26 appraiser with respect to the value of any real estate

1 which is to be covered by such home mortgage;

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

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

8 (j) knowingly ~~Will not knowingly~~ make any false  
9 promises likely to influence or persuade, or pursue a  
10 course of misrepresentation and false promises through  
11 agents, solicitors, advertising or otherwise;

12 (k) knowingly ~~Will not knowingly~~ misrepresent,  
13 circumvent or conceal, through whatever subterfuge or  
14 device, any of the material particulars or the nature  
15 thereof, regarding a transaction to which it is a party to  
16 the injury of another party thereto;

17 (l) fail to ~~Will~~ disburse funds in accordance with its  
18 agreements;

19 (m) commit ~~Has not committed~~ a crime against the law of  
20 this State, any other state or of the United States,  
21 involving moral turpitude, fraudulent or dishonest  
22 dealing, and that no final judgment has been entered  
23 against it in a civil action upon grounds of fraud,  
24 misrepresentation or deceit which has not been previously  
25 reported to the Secretary ~~Commissioner~~;

26 (n) fail to ~~Will~~ account or deliver to the owner upon

1 request any personal property such as money, fund, deposit,  
2 check, draft, mortgage, other document or thing of value  
3 which it is not in law or equity entitled to retain under  
4 the circumstances;

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

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

8 (q) submit ~~Has not submitted~~ an application for a  
9 license under this Act which contains a material  
10 misstatement;

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

14 (s) fail to ~~Will~~ advise the Secretary ~~Commissioner~~ in  
15 writing, or the Nationwide Mortgage Licensing System and  
16 Registry, as applicable, of any changes to the information  
17 submitted on the most recent application for license or  
18 averments of record within 30 days of said change. The  
19 written notice must be signed in the same form as the  
20 application for license being amended;

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

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

26 (v) fail to ~~Will~~ advise the Secretary ~~Commissioner~~ in

1 writing of judgments entered against, and bankruptcy  
2 petitions by, the license applicant within 5 days of  
3 occurrence;

4 (w) fail to ~~Will~~ advise the Secretary ~~Commissioner~~ in  
5 writing within 30 days of any request made to a licensee  
6 under this Act to repurchase a loan in a manner that  
7 completely and clearly identifies to whom the request was  
8 made, the loans involved, and the reason therefor;

9 (x) fail to ~~Will~~ advise the Secretary ~~Commissioner~~ in  
10 writing within 30 days of any request from any entity to  
11 repurchase a loan in a manner that completely and clearly  
12 identifies to whom the request was made, the loans  
13 involved, and the reason for the request;

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

17 (z) knowingly ~~Will not knowingly~~ hire or employ a ~~loan~~  
18 ~~originator who is not registered, or~~ mortgage loan  
19 originator who is not licensed, with the Secretary  
20 ~~Commissioner~~ as required under ~~Section 7-1 or~~ Section 7-1A,  
21 ~~as applicable,~~ of this Act;

22 (aa) charge ~~Will not charge~~ or collect advance payments  
23 from borrowers or homeowners for engaging in loan  
24 modification; or ~~and~~

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



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

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

7           (205 ILCS 635/4-8) (from Ch. 17, par. 2324-8)

8           Sec. 4-8. Delinquency; examination.

9           (a) (Blank). ~~The Commissioner shall obtain from the U.S.~~  
10 ~~Department of Housing and Urban Development that Department's~~  
11 ~~loan delinquency data.~~

12           (b) The Secretary ~~Commissioner~~ shall conduct as part of an  
13 examination of each licensee a review of the licensee's loan  
14 delinquency data.

15           This subsection shall not be construed as a limitation of  
16 the Secretary's ~~Commissioner's~~ examination authority under  
17 Section 4-2 of this Act or as otherwise provided in this Act.  
18 The Secretary ~~Commissioner~~ may require a licensee to provide  
19 loan delinquency data as the Secretary ~~Commissioner~~ deems  
20 necessary for the proper enforcement of the Act.

21           (c) The purpose of the examination under subsection (b)  
22 shall be to determine whether the loan delinquency data of the  
23 licensee has resulted from practices which deviate from sound  
24 and accepted mortgage underwriting practices, including, but  
25 not limited to, credit fraud, appraisal fraud, and property

1 inspection fraud. For the purpose of conducting this  
2 examination, the Secretary ~~Commissioner~~ may accept materials  
3 prepared for the U.S. Department of Housing and Urban  
4 Development. At the conclusion of the examination, the  
5 Secretary ~~Commissioner~~ shall make his or her findings available  
6 to the Residential Mortgage Board.

7 (d) The Secretary ~~Commissioner~~, at his or her discretion,  
8 may hold public hearings, or at the direction of the  
9 Residential Mortgage Board, shall hold public hearings. Such  
10 testimony shall be by a homeowner or mortgagor or his agent,  
11 whose residential interest is affected by the activities of the  
12 residential mortgage licensee subject to such hearing. At such  
13 public hearing, a witness may present testimony on his or her  
14 behalf concerning only his or her home, or home mortgage or a  
15 witness may authorize a third party to appear on his or her  
16 behalf. The testimony shall be restricted to information and  
17 comments related to a specific residence or specific  
18 residential mortgage application or applications for a  
19 residential mortgage or residential loan transaction. The  
20 testimony must be preceded by either a letter of complaint or a  
21 completed consumer complaint form prescribed by the Secretary  
22 ~~Commissioner~~.

23 (e) The Secretary ~~Commissioner~~ shall, at the conclusion of  
24 the public hearings, release his or her findings and shall also  
25 make public any action taken with respect to the licensee. The  
26 Secretary ~~Commissioner~~ shall also give full consideration to

1 the findings of this examination whenever reapplication is made  
2 by the licensee for a new license under this Act.

3 (f) A licensee that is examined pursuant to subsection (b)  
4 shall submit to the Secretary ~~Commissioner~~ a plan which shall  
5 be designed to reduce that licensee's loan delinquencies. The  
6 plan shall be implemented by the licensee as approved by the  
7 Secretary ~~Commissioner~~. A licensee that is examined pursuant to  
8 subsection (b) shall report monthly, for a one year period,  
9 one, 2, and 3 month loan delinquencies.

10 (g) Whenever the Secretary ~~Commissioner~~ finds that a  
11 licensee's loan delinquencies on insured mortgages is  
12 unusually high within a particular geographic area, he or she  
13 shall require that licensee to submit such information as is  
14 necessary to determine whether that licensee's practices have  
15 constituted credit fraud, appraisal fraud or property  
16 inspection fraud. The Secretary ~~Commissioner~~ shall promulgate  
17 such rules as are necessary to determine whether any licensee's  
18 loan delinquencies are unusually high within a particular area.

19 (Source: P.A. 99-15, eff. 1-1-16.)

20 (205 ILCS 635/4-8.3)

21 Sec. 4-8.3. Annual report ~~of mortgage brokerage and~~  
22 ~~servicing activity~~. On or before March 1 of each year or the  
23 date selected for Mortgage Call Reports under Section 4-9.1 of  
24 this Act, each licensee shall file a report with the Secretary  
25 ~~Commissioner~~ that discloses ~~shall disclose~~ such information as

1 the Secretary ~~Commissioner~~ requires. A licensee filing a  
2 Mortgage Call Report is not required to file an annual report.

3 Exempt entities as defined in subsection (d) of Section 1-4  
4 shall not file the annual report of mortgage and servicing  
5 activity required by this Section.

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

7 (205 ILCS 635/5-9)

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

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

10 (1) Provide timely notice to the borrower of any  
11 material change in the terms of the residential mortgage  
12 loan prior to the closing of the loan. For purposes of this  
13 Section, a "material change means" any of the following:

14 (A) A change in the type of loan being offered,  
15 such as a fixed or variable rate loan or a loan with a  
16 balloon payment.

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

20 (C) An increase in the interest rate of more than  
21 0.15%, or an equivalent increase in the amount of  
22 discount points charged.

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

25 (E) A change regarding the requirement or amount of

1 escrow of taxes or insurance.

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

4 (2) Timely inform the borrower if any fees payable by  
5 the borrower to the licensee increase by more than 10% or  
6 \$100, whichever is greater.

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

17 (c) If an increase in the total amount of the fee to be  
18 paid by the borrower to the broker is not disclosed in  
19 accordance with this Section, the broker shall refund to the  
20 borrower the amount by which the fee was increased. If the fee  
21 is financed into the residential mortgage loan, the broker  
22 shall also refund to the borrower the interest charged to  
23 finance the fee.

24 (d) The requirements of this Section do not apply to a  
25 licensee providing a notice of change in loan terms pursuant to  
26 the federal Consumer Financial Protection Bureau's Know Before

1 You Owe mortgage disclosure procedure pursuant to the federal  
2 Truth in Lending Act and amendments promulgated under 12 CFR  
3 1026 and the federal Real Estate Settlement Procedures Act and  
4 amendments promulgated under 12 CFR 1024. Licensees limited to  
5 soliciting residential mortgage loan applications as approved  
6 by the Director under Title 38, Section 1050.2115(c)(1) of the  
7 Illinois Administrative Code are not required to provide the  
8 disclosures under this Section as long as the solicitor does  
9 not discuss the terms and conditions with the potential  
10 borrower.

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

12 Section 99. Effective date. This Act takes effect upon  
13 becoming law."