

# HB2814



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

**HB2814**

by Rep. Elaine Nekritz

#### SYNOPSIS AS INTRODUCED:

205 ILCS 635/1-3

from Ch. 17, par. 2321-3

Amends the Residential Mortgage License Act of 1987. Provides that a mortgage loan brokered, funded, originated, serviced, or purchased by a party who is not licensed shall not be held to be invalid solely on the basis of specified violations of the Act. Effective immediately.

LRB099 08624 MGM 28787 b

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 Section 1-3 as follows:

6 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

7 Sec. 1-3. Necessity for License; Scope of Act.

8 (a) No person, partnership, association, corporation or  
9 other entity shall engage in the business of brokering,  
10 funding, originating, servicing or purchasing of residential  
11 mortgage loans without first obtaining a license from the  
12 Secretary in accordance with the licensing procedure provided  
13 in this Article I and such regulations as may be promulgated by  
14 the Secretary. The licensing provisions of this Section shall  
15 not apply to any entity engaged solely in commercial mortgage  
16 lending or to any person, partnership association, corporation  
17 or other entity exempted pursuant to Section 1-4, subsection  
18 (d), of this Act or in accordance with regulations promulgated  
19 by the Secretary hereunder. No provision of this Act shall  
20 apply to an exempt person or entity as defined in items (1) and  
21 (1.5) of subsection (d) of Section 1-4 of this Act.  
22 Notwithstanding anything to the contrary in the preceding  
23 sentence, an individual acting as a mortgage loan originator

1 who is not employed by and acting for an entity described in  
2 item (1) of subsection (tt) of Section 1-4 of this Act shall be  
3 subject to the mortgage loan originator licensing requirements  
4 of Article VII of this Act.

5       Effective January 1, 2011, no provision of this Act shall  
6 apply to an exempt person or entity as defined in item (1.8) of  
7 subsection (d) of Section 1-4 of this Act. Notwithstanding  
8 anything to the contrary in the preceding sentence, an  
9 individual acting as a mortgage loan originator who is not  
10 employed by and acting for an entity described in item (1) of  
11 subsection (tt) of Section 1-4 of this Act shall be subject to  
12 the mortgage loan originator licensing requirements of Article  
13 VII of this Act, and provided that an individual acting as a  
14 mortgage loan originator under item (1.8) of subsection (d) of  
15 Section 1-4 of this Act shall be further subject to a  
16 determination by the U.S. Department of Housing and Urban  
17 Development through final rulemaking or other authorized  
18 agency determination under the federal Secure and Fair  
19 Enforcement for Mortgage Licensing Act of 2008.

20       (a-1) A person who is exempt from licensure pursuant to  
21 paragraph (ii) of item (1) of subsection (d) of Section 1-4 of  
22 this Act as a federally chartered savings bank that is  
23 registered with the Nationwide Mortgage Licensing System and  
24 Registry may apply to the Secretary for an exempt company  
25 registration for the purpose of sponsoring one or more  
26 individuals subject to the mortgage loan originator licensing

1 requirements of Article VII of this Act. Registration with the  
2 Division of Banking of the Department shall not affect the  
3 exempt status of the applicant.

4 (1) A mortgage loan originator eligible for licensure  
5 under this subsection shall (A) be covered under an  
6 exclusive written contract with, and originate residential  
7 mortgage loans solely on behalf of, that exempt person; and  
8 (B) hold a current, valid insurance producer license under  
9 Article XXXI of the Illinois Insurance Code.

10 (2) An exempt person shall: (A) fulfill any reporting  
11 requirements required by the Nationwide Mortgage Licensing  
12 System and Registry or the Secretary; (B) provide a blanket  
13 surety bond pursuant to Section 7-12 of this Act covering  
14 the activities of all its sponsored mortgage loan  
15 originators; (C) reasonably supervise the activities of  
16 all its sponsored mortgage loan originators; (D) comply  
17 with all rules and orders (including the averments  
18 contained in Section 2-4 of this Act as applicable to a  
19 non-licensed exempt entity provided for in this Section)  
20 that the Secretary deems necessary to ensure compliance  
21 with the federal SAFE Act; and (E) pay an annual  
22 registration fee established by the Director.

23 (3) The Secretary may deny an exempt company  
24 registration to an exempt person or fine, suspend, or  
25 revoke an exempt company registration if the Secretary  
26 finds one of the following:

1 (A) that the exempt person is not a person of  
2 honesty, truthfulness, or good character;

3 (B) that the exempt person violated any applicable  
4 law, rule, or order;

5 (C) that the exempt person refused or failed to  
6 furnish, within a reasonable time, any information or  
7 make any report that may be required by the Secretary;

8 (D) that the exempt person had a final judgment  
9 entered against him or her in a civil action on grounds  
10 of fraud, deceit, or misrepresentation, and the  
11 conduct on which the judgment is based indicates that  
12 it would be contrary to the interest of the public to  
13 permit the exempt person to manage a loan originator;

14 (E) that the exempt person had an order entered  
15 against him or her involving fraud, deceit, or  
16 misrepresentation by an administrative agency of this  
17 State, the federal government, or any other state or  
18 territory of the United States, and the facts relating  
19 to the order indicate that it would be contrary to the  
20 interest of the public to permit the exempt person to  
21 manage a loan originator;

22 (F) that the exempt person made a material  
23 misstatement or suppressed or withheld information on  
24 the application for an exempt company registration or  
25 any document required to be filed with the Secretary;  
26 or

1           (G) that the exempt person violated Section 4-5 of  
2           this Act.

3           (b) No person, partnership, association, corporation, or  
4           other entity except a licensee under this Act or an entity  
5           exempt from licensing pursuant to Section 1-4, subsection (d),  
6           of this Act shall do any business under any name or title, or  
7           circulate or use any advertising or make any representation or  
8           give any information to any person, which indicates or  
9           reasonably implies activity within the scope of this Act.

10          (c) The Secretary may, through the Attorney General,  
11          request the circuit court of either Cook or Sangamon County to  
12          issue an injunction to restrain any person from violating or  
13          continuing to violate any of the foregoing provisions of this  
14          Section.

15          (d) When the Secretary has reasonable cause to believe that  
16          any entity which has not submitted an application for licensure  
17          is conducting any of the activities described in subsection (a)  
18          hereof, the Secretary shall have the power to examine all books  
19          and records of the entity and any additional documentation  
20          necessary in order to determine whether such entity should  
21          become licensed under this Act.

22          (d-1) The Secretary may issue orders against any person if  
23          the Secretary has reasonable cause to believe that an unsafe,  
24          unsound, or unlawful practice has occurred, is occurring, or is  
25          about to occur, if any person has violated, is violating, or is  
26          about to violate any law, rule, or written agreement with the

1 Secretary, or for the purposes of administering the provisions  
2 of this Act and any rule adopted in accordance with this Act.

3 (e) Any person, partnership, association, corporation or  
4 other entity who violates any provision of this Section commits  
5 a business offense and shall be fined an amount not to exceed  
6 \$25,000. A mortgage loan brokered, funded, originated,  
7 serviced, or purchased by a party who is not licensed under  
8 this Section shall not be held to be invalid solely on the  
9 basis of a violation under this Section. The changes made to  
10 this Section by this amendatory Act of the 99th General  
11 Assembly are declarative of existing law.

12 (f) Each person, partnership, association, corporation or  
13 other entity conducting activities regulated by this Act shall  
14 be issued one license. Each office, place of business or  
15 location at which a residential mortgage licensee conducts any  
16 part of his or her business must be recorded with the Secretary  
17 pursuant to Section 2-8 of this Act.

18 (g) Licensees under this Act shall solicit, broker, fund,  
19 originate, service and purchase residential mortgage loans  
20 only in conformity with the provisions of this Act and such  
21 rules and regulations as may be promulgated by the Secretary.

22 (h) This Act applies to all entities doing business in  
23 Illinois as residential mortgage bankers, as defined by "An Act  
24 to provide for the regulation of mortgage bankers", approved  
25 September 15, 1977, as amended, regardless of whether licensed  
26 under that or any prior Act. Any existing residential mortgage

1 lender or residential mortgage broker in Illinois whether or  
2 not previously licensed, must operate in accordance with this  
3 Act.

4 (i) This Act is a successor Act to and a continuance of the  
5 regulation of residential mortgage bankers provided in, "An Act  
6 to provide for the regulation of mortgage bankers", approved  
7 September 15, 1977, as amended.

8 Entities and persons subject to the predecessor Act shall  
9 be subject to this Act from and after its effective date.

10 (Source: P.A. 97-143, eff. 7-14-11; 98-492, eff. 8-16-13.)

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