

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

490N0413

HOUSE ENGROSSED NO. **SB 165** - 02/28/2007

Introduced by: Senators Gant, Abdallah, Dempster, Gray, Hauge, Koetzle, and McCracken
and Representatives Krebs, Ahlers, Boomgarden, Olson (Russell), Rave,
Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to repeal and reestablish provisions to regulate mortgage
2 lenders and brokers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Director," the director of the Division of Banking of the Department of Revenue and
6 Regulation;

7 (2) "Division," the Division of Banking of the Department of Revenue and Regulation;

8 (3) "Licensee," the person holding a license provided by this Act;

9 (4) "Mortgage lender," any person who, for valuable consideration, originates, sells, or
10 services mortgages, or holds himself, herself, or itself out as a person who, for
11 valuable consideration, originates, sells, or services mortgages, other than those
12 exempt pursuant to section 10 of this Act;

13 (5) "Mortgage broker," any person who, for compensation or gain, acts as an
14 intermediary between borrower and lender to assist a person in obtaining or applying
15 to obtain a mortgage loan or holds himself, herself, or itself out as being able to assist



1 a person in obtaining or applying to obtain a mortgage loan;

2 (6) "Mortgage brokering activities," for compensation, either directly or indirectly,
3 assisting or offering to assist in the preparation of an application for a mortgage loan
4 on behalf of a borrower, or negotiating or offering to negotiate the terms or
5 conditions of a mortgage loan with any person making mortgage loans;

6 (7) "Mortgage loan originator," any person acting under the supervision of a licensee and
7 who, for compensation or gain, takes or receives a mortgage application, assembles
8 information, and prepares paperwork and documentation necessary for obtaining a
9 mortgage loan or arranges for a conditional mortgage loan commitment between a
10 borrower and a lender, or arranges for a loan commitment from a lender. The term,
11 mortgage loan originator, does not include an employee of a licensee whose job
12 responsibilities are limited to clerical tasks that do not include processing of
13 mortgage loans;

14 (8) "Mortgage lending activities," for compensation, either directly or indirectly,
15 accepting or offering to accept applications for making mortgage loans;

16 (9) "Regional revolving loan fund," any regional revolving loan fund with a service area
17 of at least five South Dakota counties, a designated staff for loan processing and
18 servicing, a loan portfolio of at least one million dollars, and which is governed by
19 a board of directors that meets at least quarterly.

20 Section 2. No person may act as a mortgage lender, mortgage broker, or mortgage loan
21 originator in this state or use the title, mortgage broker, mortgage lender, or mortgage loan
22 originator without first obtaining a license, or in the case of originators a registration, and
23 undergoing a criminal background check from the division.

24 Section 3. Any applicant for licensure or registration shall submit to the director an

1 application on forms prescribed by the division. The forms shall include, at a minimum, all
2 addresses at which business is to be conducted, the names and titles of each director and
3 principal officer of the business, and a description of the business activities and experience of
4 the applicant.

5 Section 4. Each applicant for licensure and registration under this Act shall submit to a state
6 and federal criminal background investigation by means of fingerprint checks by the Division
7 of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the
8 Division of Banking shall submit completed fingerprint cards to the Division of Criminal
9 Investigation. Upon completion of the criminal background check, the Division of Criminal
10 Investigation shall forward to the Division of Banking all information obtained as a result of the
11 criminal background check. The Division of Banking may require a state and federal criminal
12 background check for any licensee who is the subject of a disciplinary investigation by the
13 division. Failure to submit or cooperate with the criminal background investigation is grounds
14 for denial of an application or may result in revocation of a license. The applicant shall pay for
15 any fees charged for the cost of fingerprinting or the criminal background investigation. Any
16 applicant who has previously completed a background check in another jurisdiction in
17 anticipation of receiving a license or registration in that jurisdiction may have the results of such
18 a background check forwarded to the division in satisfaction of this requirement. However, no
19 background check in another jurisdiction may be used if it was completed more than one year
20 prior to application.

21 Section 5. The applicant for an initial license shall submit a fee in the amount of not more
22 than five hundred dollars for a mortgage broker license, and not more than one thousand dollars
23 for a mortgage lender license. The applicant for initial registration shall submit a fee in the
24 amount of not more than two hundred fifty dollars for mortgage loan originator registration. The

1 director shall establish the fees by rules promulgated pursuant to chapter 1-26.

2 Section 6. No license or registration granted pursuant to this Act is assignable.

3 Section 7. Any license or registration granted under this Act expires on the following
4 December thirty-first after its issuance.

5 Section 8. Any application for renewal of a license or registration under this Act must be
6 postmarked to the director by December first and shall be accompanied by a fee to be
7 established by the director by rules promulgated pursuant to chapter 1-26. Any license granted
8 by the division prior to the implementation of this Act is valid until December 31, 2007.
9 However, no mortgage loan originator is required to be licensed prior to December 31, 2007.
10 The fee to transact business as a mortgage broker may not exceed five hundred dollars. The fee
11 to transact business as a mortgage lender may not exceed one thousand dollars. The fee to
12 register as a mortgage loan originator may not exceed two hundred fifty dollars. Any licensee
13 or registrant that files for renewal after December first and before January first of the next
14 calendar year shall pay a late fee in addition to the renewal fee. The late fee, not to exceed
15 twenty-five percent of the renewal fee, shall be established by the director by rules promulgated
16 pursuant to chapter 1-26. After January first no license may be issued unless an application is
17 filed pursuant to sections 2 to 5, inclusive, of this Act.

18 Section 9. The State of South Dakota, any political subdivision of the state, and any quasi-
19 governmental organization created by an executive order of the State of South Dakota and any
20 subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-22;
21 any nonprofit United States Treasury Community Development Financial Institution, Small
22 Business Administration Certified Development Company, or Regional Revolving Loan Fund;
23 or any commercial club, chamber of commerce, or industrial development corporation formed
24 pursuant to § 9-12-11 or 9-27-37 is subject to this Act but exempt from initial license fees,

1 renewal fees, and surety bond requirements under this Act.

2 Section 10. The following entities and their employees and exclusive agents are exempt
3 from the provisions of this Act:

4 (1) Any state bank and its subsidiary;

5 (2) Any national bank and its subsidiary;

6 (3) Any bank holding company and its subsidiary;

7 (4) Any other federally insured financial institution, and its holding company and
8 subsidiary;

9 (5) Any South Dakota chartered trust company;

10 (6) Any real estate broker licensed pursuant to chapter 36-21A; and

11 (7) Any insurance company or any person acting as an intermediary thereto, if
12 participating in mortgage lending activities solely with its own assets and for its own
13 portfolio.

14 Section 11. Any person, including a mortgage loan originator, shall complete the equivalent
15 of two years of service under the supervision and direction of a licensed mortgage broker or
16 mortgage lender, or another jurisdiction's equivalent thereof, before that person is eligible to
17 apply for a mortgage broker's or mortgage lender's license. No mortgage broker, mortgage
18 lender, or mortgage loan originator is eligible for a license without such training and experience.
19 The director may promulgate rules pursuant to chapter 1-26 with regard to such training and
20 experience. Any person licensed as a mortgage broker or mortgage lender with the director prior
21 to July 1, 2007, is exempt from this requirement.

22 Section 12. Any mortgage broker or mortgage lender licensed to practice in the State of
23 South Dakota may use the services of a mortgage loan originator that operates under direct
24 control and supervision of the mortgage broker or mortgage lender. The mortgage loan

1 originator shall be registered by the director and while registered and employed by a mortgage
2 broker or mortgage lender may not be deemed to be operating as a mortgage broker or mortgage
3 lender.

4 Section 13. Any applicant for a license shall submit with the application a bond in the
5 amount of twenty-five thousand dollars. The bond shall be issued by a surety company qualified
6 to do business as a surety in this state. The bond shall be in favor of this state for the use of this
7 state and any person who has a cause of action under this Act against the licensee. The bond
8 shall be conditioned on:

9 (1) The licensee's faithful performance under this Act and any rules adopted pursuant to
10 this Act; and

11 (2) The payment of any amounts that are due to the state or another person during the
12 time the bond is in force.

13 The bond may be continuous, and regardless of how long the bond remains in force, the
14 aggregate liability of a surety to all persons damaged by a licensee's violation of the provisions
15 of this Act may not exceed the amount of the bond. The bond may be cancelled by the surety
16 upon thirty days notice to the licensee and the director, and the surety's liability on the bond
17 shall also terminate upon the effective date of any suspension or revocation of the license.

18 Section 14. Any person, who without first obtaining a license or registration under this Act,
19 engages in the business or occupation of, or advertises or holds the person out as, or claims to
20 be, or temporarily acts as, a mortgage broker, mortgage lender, or mortgage loan originator in
21 this state is guilty of a Class 2 misdemeanor and may be held responsible for all costs of
22 prosecution, including restitution.

23 Section 15. Any licensee or registrant is subject to examination and investigation by the
24 director. The director shall promulgate rules pursuant to chapter 1- 26 that specify the process

1 by which examinations and investigations will be performed.

2 Section 16. The director may suspend, not to exceed six months, or revoke a license or
3 registration if the director finds:

4 (1) Any fact or condition exists that, if it had existed at the time the licensee or registrant
5 applied for its license or registration, would have been grounds for denying the
6 application;

7 (2) The licensee or registrant violated any provisions of this Act or any rule or order
8 promulgated by the director;

9 (3) The licensee or registrant refuses to permit the director to make any examination
10 authorized by this Act or rule promulgated pursuant to this Act, or any federal statute,
11 rule, or regulation pertaining to mortgage lending;

12 (4) The licensee or registrant willfully fails to make any report required of this Act;

13 (5) The competence, experience, character, or general fitness of the licensee or registrant
14 indicates that it is not in the public interest to permit the licensee or registrant to
15 continue to conduct business;

16 (6) The bond of the licensee has been revoked or cancelled by the surety;

17 (7) The licensee or any partner, officer, director, manager, or employee of the licensee
18 has been convicted of a felony or a misdemeanor involving any aspect of the
19 financial services business;

20 (8) The licensee or any partner, officer, director, manager, or employee of the licensee
21 has had a license substantially equivalent to a license under this Act, and issued by
22 another state, denied, revoked or suspended under the laws of that state;

23 (9) The licensee or registrant has filed an application for a license or registration which
24 as of the date the license or registration was issued, or as of the date of an order

1 denying, suspending, or revoking a license or registration, was incomplete in any
2 material respect or contained any statement that was, in light of the circumstances
3 under which it was made, false or misleading with respect to any material fact.

4 The director may revoke a license or registration for good cause pursuant to chapter 1-26.
5 If the licensee is the holder of more than one license, the director may revoke any or all of the
6 licenses.

7 Section 17. The director may, in the director's discretion, reinstate a license or registration,
8 terminate a suspension, or grant a new license or registration to any person whose license or
9 registration has been revoked or suspended if no fact or condition then exists which would
10 justify the director in refusing to grant a license or registration.

11 Section 18. Any licensee whose license or registration is subject to suspension or revocation
12 by the director, may contest such suspension or revocation in accordance with the provisions
13 of chapter 1-26.

14 Section 19. Any licensee under this Act, in addition to the license and other fees provided
15 by this Act, shall pay the annual tax provided in chapter 10-43, upon the net income of the
16 licensee measured by the net income assignable to the licensee's business in South Dakota. The
17 State of South Dakota, any political subdivision of the state, and any quasi-governmental
18 organization created by an executive order of the State of South Dakota and any subsidiary of
19 such organization; any nonprofit United States Treasury Community Development Financial
20 Institution, Small Business Administration Certified Development Company, or Regional
21 Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial
22 development corporation formed pursuant to § 9-12-11 or 9-27-37 is exempt from the payment
23 of this tax.

24 Section 20. The director may promulgate rules pursuant to chapter 1-26 for the continuing

1 education of mortgage brokers, mortgage lenders, and mortgage loan originators, and for the
2 management and administration of licenses and registrations issued pursuant to this Act.

3 Section 21. That §§ 54-14-1 to 54-14-11, inclusive, be repealed.

4 Section 22. Fees collected pursuant to this Act shall be deposited with the state treasurer in
5 the banking special revenue fund created in § 51A-2-30. Expenditures from the fund shall be
6 appropriated through the normal budget process.