

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

490N0413

SENATE BILL NO. 165

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 acts as an intermediary between borrower and
14 lender to assist a person in obtaining or applying to obtain a mortgage loan or holds
15 himself, herself, or itself out as being able to assist a person in obtaining or applying



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

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

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

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

23 Section 3. Any applicant for licensure or registration shall submit to the director an
24 application on forms prescribed by the division. The forms shall include, at a minimum, all

1 addresses at which business is to be conducted, the names and titles of each director and
2 principal officer of the business, and a description of the business activities and experience of
3 the applicant.

4 Section 4. The division shall conduct a criminal background check of any applicant for a
5 license or registration. The cost of the background check is the responsibility of the applicant.

6 Section 5. The applicant for an initial license shall submit a fee in the amount of not more
7 than five hundred dollars for a mortgage broker license, and not more than one thousand dollars
8 for a mortgage lender license. The applicant for initial registration shall submit a fee in the
9 amount of not more than two hundred fifty dollars for mortgage loan originator registration. The
10 director shall establish the fees by rules promulgated pursuant to chapter 1-26.

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

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

14 Section 8. Any application for renewal of a license or registration under this Act must be
15 postmarked to the director by December first and shall be accompanied by a fee to be
16 established by the director by rules promulgated pursuant to chapter 1-26. The fee to transact
17 business as a mortgage broker may not exceed five hundred dollars. The fee to transact business
18 as a mortgage lender may not exceed one thousand dollars. The fee to register as a mortgage
19 loan originator may not exceed two hundred fifty dollars.

20 Section 9. The State of South Dakota, any political subdivision of the state, and any quasi-
21 governmental organization created by an executive order of the State of South Dakota and any
22 subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-22;
23 any nonprofit United States Treasury Community Development Financial Institution, Small
24 Business Administration Certified Development Company, or Regional Revolving Loan Fund;

1 or any commercial club, chamber of commerce, or industrial development corporation formed
2 pursuant to § 9-12-11 or 9-27-37 is subject to this Act but exempt from initial license fees,
3 renewal fees, and surety bond requirements under this Act.

4 Section 10. The following entities are exempt from licensing under this Act:

- 5 (1) Any state bank and its subsidiary;
- 6 (2) Any national bank and its subsidiary;
- 7 (3) Any bank holding company and its subsidiary;
- 8 (4) Any other federally insured financial institution, and its holding company and
9 subsidiary;
- 10 (5) Any South Dakota chartered trust company;
- 11 (6) Any real estate broker licensed pursuant to chapter 36-21A; and
- 12 (7) Any insurance company or any person acting as an intermediary thereto, if
13 participating in mortgage lending activities solely with its own assets and for its own
14 portfolio.

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

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

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

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

- 10 (1) The licensee's faithful performance under this Act and any rules adopted pursuant to
11 this Act; and
- 12 (2) The payment of any amounts that are due to the state or another person during the
13 calendar year for which the bond is given.

14 The aggregate liability of a surety to all persons damaged by a licensee's violation of the
15 provisions of this Act may not exceed the amount of the bond.

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

21 Section 15. Any licensee or registrant is subject to examination and investigation by the
22 director. The director shall promulgate rules pursuant to chapter 1- 26 that specify the process
23 by which examinations and investigations will be performed.

24 Section 16. The director may suspend, not to exceed six months, or revoke a license or

1 registration if the director finds:

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

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

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

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

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

14 (6) The bond of the licensee has been revoked;

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

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

21 (9) The licensee or registrant has filed an application for a license or registration which
22 as of the date the license or registration was issued, or as of the date of an order
23 denying, suspending, or revoking a license or registration, was incomplete in any
24 material respect or contained any statement that was, in light of the circumstances

1 under which it was made, false or misleading with respect to any material fact.

2 The director may revoke a license or registration for good cause pursuant to chapter 1-26.

3 If the licensee is the holder of more than one license, the director may revoke any or all of the
4 licenses.

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

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

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

22 Section 20. The director may promulgate rules pursuant to chapter 1-26 for the continuing
23 education of mortgage brokers, mortgage lenders, and mortgage loan originators, and for the
24 management and administration of licenses and registrations issued pursuant to this Act.

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