S T A T E   O F   N E W   Y O R K

3781--A

2011-2012 Regular Sessions

I N S E N A T E

March 3, 2011

Introduced by Sen. SMITH -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law and the penal law, in relation to unauthorized entities, unregistered mortgage brokers and mortgage fraud

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The banking law is amended by adding a new section 78-a to read as follows:

S 78-A. UNAUTHORIZED ENTITIES. THE CRIMINAL INVESTIGATIONS BUREAU SHALL REFER ANY INSTANCES OF A PERSON, PARTNERSHIP, ASSOCIATION, CORPORATION OR OTHER ENTITY WHICH IS OPERATING WITHOUT BEING CHARTERED, LICENSED OR REGISTERED AS REQUIRED UNDER THIS CHAPTER TO THE ATTORNEY GENERAL AND TO ANY OTHER FEDERAL, STATE OR LOCAL AGENCY OR ENTITY FOR APPROPRIATE ENFORCEMENT ACTION. AT LEAST EVERY SIX MONTHS, THE ATTORNEY GENERAL SHALL PROVIDE THE BUREAU WITH A WRITTEN UPDATE OF THE STATUS OF ANY ENFORCEMENT ACTIONS IT HAS TAKEN AGAINST SUCH PERSONS OR ENTITIES.

S 2. Subdivision 5 of section 590 of the banking law is amended by adding a new paragraph (f) to read as follows:

(F) NO MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION SHALL CONDUCT BUSINESS WITH ANY PERSON, PARTNERSHIP, ASSOCIATION, CORPORATION OR OTHER ENTITY WHICH IT KNOWS OR SHOULD HAVE KNOWN IS ACTING AS A MORTGAGE BANKER OR A MORTGAGE BROKER WITHOUT BEING LICENSED OR REGISTERED AS REQUIRED BY THIS ARTICLE. A MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION SHALL PROMPTLY NOTIFY THE DEPARTMENT OF ANY SUCH UNLICENSED OR UNREGISTERED OPERATIONS.

S 3. Subdivision 5 of section 598 of the banking law, as added by chapter 571 of the laws of 1986, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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5. Civil penalties assessable against unlicensed or unregistered persons or entities. If any non-exempt unlicensed or unregistered person or entity engages in activities encompassed by this article, he shall be liable to any person or entity affected by such activities for a sum of money of not less than the amount of money paid to an affected person or entity in connection with such activities, nor more than four times such sum; PROVIDED HOWEVER THAT WHERE A NON-EXEMPT UNLICENSED OR UNREGISTERED PERSON HAS CONTINUED TO ENGAGE IN SUCH UNAUTHORIZED ACTIVITIES AFTER RECEIVING A CEASE AND DESIST NOTICE FROM THE SUPERINTENDENT, THE MAXIMUM AMOUNT OF LIABILITY SHALL BE UP TO TEN TIMES SUCH SUM. Such sum may be sued for and recovered by any person or entity for his use and benefit in any court of competent jurisdiction.

S 4. The article heading of article 187 of the penal law, as added by chapter 472 of the laws of 2008, is amended to read as follows:

[RESIDENTIAL] MORTGAGE FRAUD

S 5. Section 187.00 of the penal law, as amended by chapter 507 of the laws of 2009, is amended to read as follows:

S 187.00 Definitions.

As used in this article:

1. "Person" means any individual or entity.

2. ["Residential mortgage] "MORTGAGE loan" means a loan or agreement to extend credit, including the renewal, refinancing or modification of any such loan, made to a person OR AN ENTITY, which loan is primarily secured by either a mortgage, deed of trust, or other lien upon any interest in [residential] real property or any certificate of stock or other evidence of ownership in, and a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of [residential] real property.

3. ["Residential real property" means real property improved by a one-to-four family dwelling, or a residential unit in a building including units owned as condominiums or on a cooperative basis, used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

4. "Residential mortgage] "MORTGAGE fraud" is committed by a person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be used in soliciting an applicant for, applying for, underwriting or closing a [residential] mortgage loan, or filing with a county clerk of any county in the state arising out of and related to the closing of a [residential] mortgage loan, any written statement which:

(a) contains materially false information concerning any fact material thereto; or

(b) conceals, for the purpose of misleading, information concerning any fact material thereto.

S 6. Section 187.05 of the penal law, as added by chapter 472 of the laws of 2008, is amended to read as follows:

S 187.05 [Residential mortgage] MORTGAGE fraud in the fifth degree.

A person is guilty of [residential] mortgage fraud in the fifth degree when he or she commits [residential] mortgage fraud.

[Residential mortgage] MORTGAGE fraud in the fifth degree is a class A misdemeanor.

S 7. Section 187.10 of the penal law, as added by chapter 472 of the laws of 2008, is amended to read as follows:

S 187.10 [Residential mortgage] MORTGAGE fraud in the fourth degree.

A person is guilty of [residential] mortgage fraud in the fourth degree when he or she commits [residential] mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of one thousand dollars.

[Residential mortgage] MORTGAGE fraud in the fourth degree is a class E felony.

S 8. Section 187.15 of the penal law, as added by chapter 472 of the laws of 2008, is amended to read as follows:

S 187.15 [Residential mortgage] MORTGAGE fraud in the third degree.

A person is guilty of [residential] mortgage fraud in the third degree when he or she commits [residential] mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of three thousand dollars.

[Residential mortgage] MORTGAGE fraud in the third degree is a class D felony.

S 9. Section 187.20 of the penal law, as added by chapter 472 of the laws of 2008, is amended to read as follows:

S 187.20 [Residential mortgage] MORTGAGE fraud in the second degree.

A person is guilty of [residential] mortgage fraud in the second degree when he or she commits [residential] mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of fifty thousand dollars.

[Residential mortgage] MORTGAGE fraud in the second degree is a class C felony.

S 10. Section 187.25 of the penal law, as added by chapter 472 of the laws of 2008, is amended to read as follows:

S 187.25 [Residential mortgage] MORTGAGE fraud in the first degree.

A person is guilty of [residential] mortgage fraud in the first degree when he or she commits [residential] mortgage fraud and thereby receives proceeds or any other funds in the aggregate in excess of one million dollars.

[Residential mortgage] MORTGAGE fraud in the first degree is a class B felony.

S 11. This act shall take effect on the thirtieth day after it shall have become a law.