

STATE OF NEW YORK

8050--A

IN SENATE

March 22, 2018

Introduced by Sens. HAMILTON, LITTLE -- (at request of the Department of State) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to registration of real estate appraisal management companies by the department of state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new article 6-H to
2 read as follows:

ARTICLE 6-H

REAL ESTATE APPRAISAL MANAGEMENT COMPANIES

Section 160-aaaa. Definitions.

6 160-bbbb. Registration required.

7 160-cccc. Exemptions.

8 160-dddd. Forms.

9 160-eeee. Denial of registration.

10 160-ffff. Expiration of license.

11 160-gggg. Fees.

12 160-hhhh. Owner requirements.

13 160-iiii. Controlling persons.

14 160-jjjj. Employee requirements.

15 160-kkkk. Restrictions.

16 160-llll. Recordkeeping.

17 160-mmmm. Appraiser independence; unlawful acts.

18 160-nnnn. Mandatory reporting.

19 160-oooo. Unprofessional conduct.

20 160-pppp. Alteration of appraisal reports.

21 160-qqqq. Enforcement.

22 160-rrrr. Disciplinary hearings.

23 160-ssss. Power to suspend a license.

24 160-tttt. Investigation.

25 160-uuuu. Rule-making authority.

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

LBD14549-04-8

1 160-vvvv. Violations.

2 160-www. Severability.

3 160-xxxx. Judicial review.

4 § 160-aaaa. Definitions. As used in this article, the following terms
5 shall have the following meanings:

6 1. "Appraisal" or "real estate appraisal" means an analysis, opinion
7 or conclusion relating to the nature, quality, value or utility of spec-
8 ified interests in, or aspects of, identified real estate. An appraisal
9 may be classified by subject matter into either a valuation or an analy-
10 sis.

11 2. "Appraisal management company" or "AMC" means an individual or
12 business entity that:

13 (a) provides appraisal management services to creditors or to second-
14 ary mortgage market participants, including affiliates;

15 (b) provides such services in connection with valuing a consumer's
16 real property as security for consumer credit transactions secured by a
17 consumer's principal dwelling; and

18 (c) within a given year, oversees an appraisal panel of more than
19 fifteen appraisers working in New York state or twenty-five or more
20 appraisers working in two or more states. An AMC shall not include a
21 department or division of an entity that provides appraisal management
22 services only to that entity.

23 3. "Appraisal management services" means to, directly or indirectly,
24 provide any of the following services on behalf of a lender, financial
25 institution, client, or any other person in connection with valuing a
26 consumer's principal dwelling as security for a consumer credit trans-
27 action or incorporating such transactions into securitizations:

28 (a) administer an appraiser panel;

29 (b) recruit, retain or select appraisers;

30 (c) qualify or verify licensing or certification and negotiate fees
31 and service level expectations with persons who are part of an appraiser
32 panel;

33 (d) contract with appraisers to perform appraisal assignments;

34 (e) receive an order for an appraisal from one person, and deliver the
35 order for the appraisal to an appraiser that is part of an appraiser
36 panel for completion;

37 (f) manage the process of having an appraisal performed, including
38 providing administrative duties, such as receiving appraisal orders and
39 reports, submitting completed appraisal reports to creditors and under-
40 writers for services provided, and reimbursing appraisers for services
41 performed;

42 (g) track and determine the status of orders for appraisals;

43 (h) conduct quality control of a completed appraisal prior to the
44 delivery of the appraisal to the person that ordered the appraisal;

45 (i) provide a completed appraisal performed by an appraiser to one or
46 more clients; or

47 (j) compensate appraisers for services rendered.

48 An individual who hires an appraiser solely for his or her own
49 purposes, shall not be deemed an appraisal management company.

50 4. "Appraiser" means a person licensed or certified pursuant to arti-
51 cle six-E of this chapter.

52 5. "Appraiser panel" means a network, list or roster of licensed or
53 certified appraisers approved by the appraisal management company to
54 perform appraisals as independent contractors of the appraisal manage-
55 ment company.

1 6. "Appraisal review" means the act or process of developing and
2 communicating an opinion about the quality of another appraiser's work
3 that was performed as part of an appraisal assignment. Appraisal reviews
4 must be performed by a person who is certified as a real estate
5 appraiser pursuant to article six-E of this chapter.

6 7. "Board" means the state board of real estate appraisal which shall
7 advise the department, as necessary, on implementation of, and enforce-
8 ment of this article.

9 8. "Competent appraiser" means an appraiser that satisfies each
10 provision of the competency rule of the uniform standards of profes-
11 sional appraisal practice for a specific appraisal assignment or valu-
12 ation service that the appraiser has received, or may receive, from an
13 appraisal management company.

14 9. "Controlling person" means:

15 (a) an owner, officer or director of an appraisal management company,
16 or an individual who holds an ownership interest of ten percent or more
17 of such company;

18 (b) an individual employed, appointed or authorized by an appraisal
19 management company that has the authority to enter into a contractual
20 relationship with other persons for the performance of appraisal manage-
21 ment services and has the authority to enter into agreements with
22 appraisers for the performance of appraisals; or

23 (c) an individual who possesses, directly or indirectly, the power to
24 direct or cause the direction of the management or policies of an
25 appraisal management company.

26 10. "Department" means the New York state department of state.

27 11. "Hybrid firm or entity" means an entity that hires both real
28 estate appraisers as employees to perform appraisals of real property,
29 and engage independent contractors to perform such appraisals. A hybrid
30 firm or entity shall be treated as an AMC for purposes of state regis-
31 tration if it oversees more than fifteen real estate appraisers complet-
32 ing valuation services in an individual state or twenty-five or more
33 real estate appraisers in two or more states within a given year. The
34 numerical calculation for a hybrid firm or entity should only include
35 real estate appraisers engaged as independent contractors.

36 12. "Person" means an individual, partnership, corporation, or any
37 other entity recognized under New York state law.

38 13. "Real estate" means an identified parcel or tract of land, includ-
39 ing improvements, if any.

40 14. "Real property" means the interest, benefits, and rights inherent
41 in the ownership of real estate.

42 15. "Uniform standards of professional appraisal practice" or "USPAP"
43 means the appraisal standards promulgated by the appraisal standards
44 board of the appraisal foundation.

45 16. "Secondary mortgage market participant" means a guarantor or
46 insurer of mortgage-backed securities, or an underwriter or issuer of
47 mortgage-backed securities. Secondary mortgage market participant only
48 includes an individual investor in a mortgage-backed security if that
49 investor also serves in the capacity of a guarantor, insurer, underwrit-
50 er, or issuer for such mortgage-backed security.

51 § 160-bbbb. Registration required. It shall be unlawful for a person
52 to, directly or indirectly, engage or attempt to engage in business as
53 an appraisal management company, or to advertise or hold oneself out as
54 engaging in or conducting business as an appraisal management company
55 without first obtaining a certificate of registration issued by the
56 department under the provisions of this article.

1 § 160-cccc. Exemptions. The provisions of this article shall not apply
2 to any person that exclusively employs appraisers for the performance of
3 appraisals or to any appraisal management company that is a wholly-owned
4 subsidiary of a financial institution, which is regulated by the federal
5 financial institution regulatory agency. The registration provisions of
6 this article shall not apply to the state, any state agency or authori-
7 ty, or any political subdivision of the state that employs appraisers.

8 § 160-dddd. Forms. An applicant for a certificate of registration as
9 an appraisal management company shall submit an application on such
10 forms as prescribed by the department.

11 § 160-eeee. Denial of registration. The department may investigate the
12 good character of applicants for a certificate of registration under
13 this article and may deny the issuance of such certificate of registra-
14 tion based upon lack of good character which may include, but is not
15 limited to, any of the grounds enumerated in this article.

16 § 160-ffff. Expiration of license. A certificate of registration
17 granted by the department pursuant to this article shall be valid for a
18 period of two years from the date upon which it is issued.

19 § 160-gggg. Fees. 1. The department shall collect a fee of two hundred
20 fifty dollars for a certificate of registration issued or reissued under
21 the provisions of this article. Additionally, the department shall
22 assess twenty-five dollars for each appraiser added to an appraisal
23 management company's appraiser panel.

24 2. The department shall collect from each appraisal management company
25 seeking to be registered, the amount determined by the appraisal subcom-
26 mittee to be a national registry fee for each appraiser, that performs
27 appraisal services within New York on the appraiser panel of an
28 appraisal management company pursuant to Section 1109(a)(4) of the
29 federal Financial Institutions Reform, Recovery, and Enforcement Act of
30 1989 as amended by the Dodd-Frank Wall Street Reform and Consumer
31 Protection Act of 2010. The department may transmit the annual registry
32 fee to the appraisal subcommittee. The department shall provide its
33 roster of appraisal management companies to the appraisal subcommittee.
34 These transmittals shall occur at least annually.

35 3. Except for changes made on a renewal application, appraisal manage-
36 ment companies shall provide the department with notice of a change in
37 the appraisal management's principal address. Change of address notifi-
38 cations shall be accompanied by a fee of ten dollars.

39 4. Except for changes made on a renewal application, the department
40 shall collect a fee of ten dollars for changing a name on a certificate
41 of registration.

42 5. In lieu of the fee set forth in subdivision one of this section,
43 the department shall collect a fee of three hundred fifty dollars to
44 reissue a certificate of registration under this article which was
45 submitted after the expiration of the immediately preceding registration
46 term.

47 § 160-hhhh. Owner requirements. An appraisal management company apply-
48 ing for a certificate of registration shall not be owned in whole or in
49 part, directly or indirectly, by a person who has had a license, regis-
50 tration or certificate to act as a real estate appraiser denied,
51 revoked, or surrendered in lieu of pending discipline in any state or by
52 a person holding ten percent or more of the company where that person
53 has had a license, registration or certificate to act as a real estate
54 appraiser denied, revoked, or surrendered in lieu of possible discipline
55 in any state. For the purposes of this section, a non-substantive

1 ground for denial, revocation, or surrender of an appraiser's license
2 should not be construed as an automatic prohibition.

3 § 160-iiii. Controlling persons. 1. Each appraisal management company
4 applying for a certificate of registration shall designate one control-
5 ling person who shall be the main contact for all communication between
6 the department and the appraisal management company. Such designated
7 controlling person shall never have had a license or certificate to act
8 as an appraiser denied, revoked, or surrendered in lieu of possible
9 discipline in any state and shall be of good moral character, as deter-
10 mined by the department. Applicants shall cooperate with any such back-
11 ground investigation conducted by the department.

12 2. Each person that owns more than ten percent of an appraisal manage-
13 ment company shall be of good moral character, as determined by the
14 department. Applicants shall cooperate with any such background inves-
15 tigation conducted by the department.

16 3. Each appraisal management company applying for a certificate of
17 registration shall certify to the department that it has reviewed each
18 entity that owns more than ten percent of the appraisal management
19 company and that no entity that owns more than ten percent of the
20 appraisal management company is more than ten percent owned by any
21 person that has had a license or certificate to act as an appraiser
22 refused, denied, cancelled, revoked, or surrendered in lieu of a pending
23 revocation.

24 § 160-jjjj. Employee requirements. 1. An appraisal management company
25 that applies for a certificate of registration shall not knowingly
26 employ, utilize, or engage, for any real estate appraisal, valuation
27 service or appraisal review assignment, a person who has had a license
28 or certificate to act as an appraiser in this state or in any other
29 state denied, revoked, or surrendered in lieu of possible discipline,
30 unless such license has been reinstated.

31 2. Prior to placing an assignment for an appraisal or valuation
32 service with an appraiser on the appraiser panel of an appraisal manage-
33 ment company, the appraisal management company shall verify that the
34 appraiser receiving the assignment is a competent appraiser as defined
35 by the USPAP Competency Rule with regards to geographic area and the
36 type of property being appraised. An appraiser is deemed part of an
37 appraisal management company panel as of the earliest date on which: (a)
38 the appraisal management company accepts the appraiser for consideration
39 for future appraisal assignments in covered transactions or for second-
40 ary mortgage market participants in connection with covered trans-
41 actions; or (b) engages the appraiser to perform one or more appraisals
42 on behalf of a creditor for a covered transaction or secondary mortgage
43 market participant in connection with covered transactions.

44 3. An appraisal management company may not hire, employ or engage, or
45 in any way contract with or pay a person who is not licensed or certi-
46 fied as a real estate appraiser by the department pursuant to article
47 six-E of this chapter, unless the work being performed is a comparative
48 market analysis for the purpose of or intention to list or sell real
49 estate.

50 4. An appraiser shall be considered part of an appraisal management
51 company's appraiser panel until: (a) the appraisal management company
52 sends a written notice to such appraiser removing such appraiser with an
53 explanation; or (b) receives a written notice from such appraiser asking
54 to be removed or of the death or incapacity of such appraiser.

55 § 160-kkkk. Restrictions. An appraisal management company that applies
56 for a certificate of registration shall not knowingly:

1 1. Employ any person in a position in which the person has the respon-
2 sibility to order appraisals or valuation services or to review
3 completed appraisals who has had a license, registration or certificate
4 to act as an appraiser in this state or in any other state, refused,
5 denied, cancelled, revoked, or surrendered in lieu of a pending revoca-
6 tion, unless such license has been reinstated;

7 2. Enter into any independent contractor arrangement, whether in
8 verbal, written, or by other form, with any person who has had a
9 license, registration or certificate to act as an appraiser in this
10 state or in any other state, refused, denied, cancelled, revoked, or
11 surrendered in lieu of a pending revocation, unless such license has
12 been reinstated; and

13 3. Enter into any contract, agreement, or other business relationship,
14 whether in verbal, written, or other form, with any entity that employs,
15 has entered into an independent contract arrangement, or has entered
16 into any contract, agreement, or other business relationship, whether in
17 verbal, written, or any other form, with any person who has ever had a
18 license, registration or certificate to act as an appraiser in this
19 state or in any other state, refused, denied, cancelled, revoked, or
20 surrendered in lieu of a pending revocation, unless such license has
21 been reinstated.

22 § 160-1111. Recordkeeping. Each appraisal management company shall
23 maintain a detailed record of each service request that it receives and
24 the real estate appraiser that performs such appraisal for the appraisal
25 management company. Records shall be maintained for a period of at least
26 five years after such appraisal is completed or two years after final
27 disposition of a judicial proceeding related to such assignment, which-
28 ever period expires later. Appraisal management companies shall make
29 records available to the department upon request. Appraisal management
30 companies shall also allow the department to examine the books and
31 records of the appraisal management company and require it to submit
32 reports, information and documents upon request. Appraisal management
33 companies shall also allow the department to verify that the appraisers
34 on such panel hold a valid license or certification.

35 § 160-1111. Appraiser independence; unlawful acts. Each appraisal
36 management company shall ensure that real estate appraisals are
37 conducted independently and free from inappropriate influence and coer-
38 cion. Notwithstanding any other provision of this article, it shall be
39 unlawful for any employee, director, officer, or agent of an appraisal
40 management company registered in this state pursuant to this article to:

41 1. Compensate, coerce, extort, collude, instruct, induce, bribe, or
42 intimidate, or attempt to compensate, coerce, extort, collude, instruct,
43 induce, bribe, or intimidate a person, firm or other entity conducting
44 or involved in an appraisal for the purpose of causing the appraised
45 value assigned under the appraisal or other valuation services to the
46 property to be based on any factor other than the independent judgment
47 of the appraiser;

48 2. Mischaracterize the appraised value of a property in conjunction
49 with a consumer credit transaction;

50 3. Seek to influence an appraiser or otherwise to encourage a targeted
51 value in order to facilitate the making or pricing of a consumer credit
52 transaction;

53 4. Act without just cause to withhold or threaten to withhold timely
54 payment for an appraisal report or for other valuation services rendered
55 with such appraisal report or services provided in accordance with the
56 contract between parties;

1 5. Act without just cause to withhold or threaten to withhold future
2 business, or to demote or terminate an appraiser without just cause;

3 6. Expressly or implicitly promise future business, promotions, or
4 increased compensation for an appraiser in exchange for the real estate
5 appraiser inflating or deflating his or her appraised value of real
6 property;

7 7. Require a real estate appraiser to indemnify an appraisal manage-
8 ment company or hold an appraisal management company harmless for any
9 liability, damage, losses, or claims arising out of the services
10 performed by such appraisal management company, and not the services
11 performed by the appraiser;

12 8. Condition the request for an appraisal or the payment of an earned
13 fee, salary or bonus, on the opinion, conclusion, or valuation to be
14 reached, or on a preliminary estimate or opinion requested from an
15 appraiser;

16 9. Request that an appraiser provide an estimated, predetermined, or
17 desired valuation in an appraisal report, or provide estimated values or
18 comparable sales at any time prior to the appraiser's completion of an
19 appraisal;

20 10. Provide to an appraiser an anticipated, estimated, encouraged, or
21 desired value for a subject property or a proposed or target amount to
22 be loaned to the borrower, except that a copy of the sales contract for
23 purchase transactions may be provided; or

24 11. Provide to an appraiser, or any entity or person related to the
25 appraiser, stock or any other financial or non-financial benefits in
26 exchange for appraising property in a manner other than that which is
27 within the independent opinion of the appraiser.

28 Nothing in this section shall be construed as prohibiting the
29 appraisal management company from asking an appraiser to consider addi-
30 tional, appropriate property information, including: additional compa-
31 rable properties to make or support an appraisal; provide further
32 detail, substantiation, or explanation for the appraiser's value conclu-
33 sion; or correct errors in the appraisal report.

34 § 160-nnnn. Mandatory reporting. An appraisal management company that
35 has a reasonable basis to believe an appraiser within the appraisal
36 management company's appraisal panel is failing to comply with the
37 uniform standards of professional appraisal practice, is violating
38 applicable laws, or is otherwise engaging in unethical or unprofessional
39 conduct shall immediately refer such matter to the department.

40 § 160-oooo. Unprofessional conduct. 1. Appraisal management companies
41 shall not engage in unprofessional conduct including, but not limited to
42 the following:

43 (a) Requiring an appraiser to modify any aspect of an appraisal report
44 or valuation service report, unless such modifications are appropriate
45 according to USPAP;

46 (b) Requiring an appraiser to prepare an appraisal report or valuation
47 service report if such appraiser, in their professional judgment,
48 believes they don't have the necessary expertise for the specific
49 geographic and or specific area type;

50 (c) Requiring an appraiser to prepare an appraisal report or valuation
51 service under a time frame that such appraiser believes, in their
52 professional judgment, does not afford such appraiser the ability to
53 meet all the relevant legal and professional obligations including USPAP
54 requirements. Notwithstanding the foregoing provisions of this para-
55 graph, all appraisal reports should be completed within a reasonable

1 timeframe and appraisers may not unnecessarily delay completing
2 appraisal assignments;

3 (d) Prohibiting or inhibiting communication between the appraiser and
4 the lender, a real estate licensee, or any other person from whom such
5 appraiser, in their professional judgment is relevant;

6 (e) Requiring the appraiser to do anything that does not comply with
7 USPAP, or any assignment conditions and certifications required by the
8 client;

9 (f) Making any portion of the appraiser's fee or the appraisal manage-
10 ment company's fee contingent upon a favorable outcome, including, but
11 not limited to, the closing of a loan, requiring a specific dollar
12 amount be achieved by such appraiser in the appraisal report, making
13 requests for the purpose of facilitating a mortgage loan transaction,
14 setting a broker price opinion, or setting any other real property price
15 or value estimation that does not qualify as an appraisal; or

16 (g) Each appraisal management company operating in this state shall
17 make payment to an appraiser for the completion of an appraisal or valu-
18 ation assignment within thirty days of the date on which such appraiser
19 transmits or otherwise provides the completed appraisal or valuation
20 services to the appraisal management company or its assignee;

21 2. It shall be unlawful for an appraisal management company to:

22 (a) Knowingly fail to compensate an appraiser at a rate that is
23 reasonable and customary for appraisal or other valuation services being
24 performed in the market area of the property being appraised without the
25 services of an appraisal management company in a manner that is either
26 inconsistent with, or would violate section 1639(e) of the federal Truth
27 in Lending Act (15 USC §1639(e));

28 (b) Knowingly include any fees for appraisal management services that
29 are performed by the appraisal management company for a lender, client,
30 or other person in the amount that it charges the lender, client, or
31 other person for the actual completion of an appraisal or valuation
32 service by an appraiser that is part of the appraiser panel of the
33 appraisal management company;

34 (c) Knowingly fail to separate any and all fees charged to a client by
35 the appraisal management company for the actual completion of an
36 appraisal by an appraiser from the fees charged to a lender, client, or
37 any other person by an appraisal management company for appraisal
38 management services;

39 (d) Knowingly prohibit an appraiser from recording the fee that such
40 appraiser was paid by the appraisal management company for the perform-
41 ance of the appraisal within the appraisal report that is submitted by
42 such appraiser to the appraisal management company;

43 (e) Knowingly fail to separately state the fees paid to an appraiser
44 for appraisal services and the fees charged by the appraisal management
45 company for services associated with the management of the appraisal
46 process to the client, borrower and any other payer. Appraisal manage-
47 ment companies shall provide a copy of the appraiser's invoice with a
48 copy of any appraisal report submitted to a client or a client's repre-
49 sentative;

50 (f) Allow the removal from rotation of an appraiser from an appraiser
51 panel, without prior written notice to such appraiser with just cause;
52 or

53 (g) Obtain, use, or pay for a second or subsequent appraisal or the
54 ordering of an automated valuation model or any other valuation service
55 in connection with a mortgage financing transaction unless there is a
56 reasonable basis to believe that the initial appraisal was flawed or

1 tainted and such basis is clearly and appropriately noted in the loan
2 file, or unless such appraisal or automated valuation model is done
3 pursuant to a bona fide pre- or post-funding appraisal review or quality
4 control process. Nothing in this paragraph shall prohibit an AMC from
5 obtaining additional appraisals if required by a lending program, or if
6 such additional appraisals are required by applicable local, state, or
7 federal law.

8 § 160-pppp. Alteration of appraisal reports. An appraisal management
9 company shall not alter, modify, or otherwise change a completed
10 appraisal or valuation service report submitted by an appraiser by
11 removing such appraiser's signature or seal or by adding information to,
12 or removing information from such report with intent to change the valu-
13 ation conclusion. An appraisal management company shall not require an
14 appraiser to provide such appraisal management company with such
15 appraiser's digital signature or seal.

16 § 160-gqqq. Enforcement. The department may revoke or suspend the
17 license of an appraisal management company, or in lieu thereof may
18 impose a fine, per violation, not to exceed twenty-five thousand dollars
19 if the department finds that the licensee has violated any provision of
20 this article, or for a material misstatement in the application for such
21 license, or if such licensee has been found guilty of fraud or fraudu-
22 lent practices, or for dishonest or misleading advertising, or has
23 demonstrated untrustworthiness or incompetency to act as an appraisal
24 management company, or has violated any provision of this article or a
25 regulation promulgated thereunder. The department shall report any such
26 violations by appraisal management companies to the appraisal subcommit-
27 tee.

28 § 160-rrrr. Disciplinary hearings. The department shall, before revok-
29 ing or suspending any license or imposing any fine or reprimand on the
30 holder thereof, and at least twenty days prior to the date set for the
31 hearing, notify, in writing, the holder of such license of any charges
32 made and shall afford such licensee an opportunity to be heard in person
33 or by counsel in reference thereto. Such written notice may be served
34 by personal delivery to the licensee, or by certified mail to the last
35 known business address of such licensee or unlicensed person, or by any
36 method authorized by the civil practice law and rules. The hearing on
37 such charges shall be at such time and place as the department shall
38 prescribe.

39 § 160-ssss. Power to suspend a license. In cases where the health,
40 safety, or welfare of the public is endangered, the department shall
41 have the authority to immediately suspend a license pending a hearing
42 before an administrative law judge.

43 § 160-tttt. Investigation. The department shall have the power to
44 enforce the provisions of this article and upon complaint of any person,
45 or on its own initiative, to investigate any violation thereof or to
46 investigate the business, business practices and business methods of an
47 appraisal management company, if in the opinion of the department such
48 investigation is warranted. Each such applicant or licensee shall be
49 obliged, on request of the department, to supply such information as may
50 be required concerning his or its business, business practices or busi-
51 ness methods, or proposed business practices or methods.

52 For the purpose of enforcing the provisions of this article, and in
53 making investigations relating to any violation thereof, and for the
54 purpose of investigating the character, competency and integrity of the
55 applicants or licensees hereunder, and for the purpose of investigating
56 the business, business practices and business methods of any applicant

1 or licensee, or of the officers or agents thereof, the department,
2 acting by such officer or person in the department as the secretary of
3 state may designate, shall have the power to subpoena and bring before
4 the officer or person so designated any person in this state and require
5 the production of any books, records or papers which he deems relevant
6 to the inquiry and administer an oath to and take testimony of any
7 person or cause his or her deposition to be taken, except that any
8 applicant or licensee or officer or agent thereof shall not be entitled
9 to fees and/or mileage. A subpoena issued under this section shall be
10 regulated by the civil practice law and rules. Any person, duly subpoe-
11 naed, who fails to obey such subpoena without reasonable cause or with-
12 out such cause refuses to be examined or to answer any legal or perti-
13 nent question as to the character or qualification of such applicant or
14 licensee or such applicant's or licensee's business, business practices
15 and methods or such violations, shall be guilty of a misdemeanor. The
16 testimony of witnesses in any investigative proceeding shall be under
17 oath, which the secretary of state or one of his deputies, or a subordi-
18 nate of the department designated by the secretary of state, may admin-
19 ister, and willful false swearing in any such proceeding shall be perju-
20 ry.

21 § 160-uuuu. Rule-making authority. The department may adopt rules not
22 inconsistent with the provisions of this chapter which may be reasonably
23 necessary to implement, administer, and enforce the provisions of this
24 chapter.

25 § 160-vvvv. Violations. 1. Any person or company who fails to obtain a
26 certificate of registration required pursuant to this article shall be
27 guilty of a misdemeanor.

28 2. Criminal actions for failure to obtain a certificate of registra-
29 tion shall be prosecuted by the attorney general, or his deputy, in the
30 name of the people of the state, and in any such prosecution the attor-
31 ney general, or his deputy, shall exercise all the powers and perform
32 all the duties the district attorney would otherwise be authorized to
33 exercise or to perform therein.

34 § 160-www. Severability. Should the courts of this state declare any
35 provision of this article unconstitutional, or unauthorized, or in
36 conflict with any other section or provision of this article, such deci-
37 sion shall affect only such section or provision so declared to be
38 unconstitutional or unauthorized and shall not affect any other section
39 or part of this article.

40 § 160-xxxx. Judicial review. The actions of the department in granting
41 or refusing to grant or to renew a license under this article or in
42 revoking or suspending such a license or imposing any fine or reprimand
43 on the holder thereof or refusing to revoke or suspend such a license or
44 impose any fine or reprimand shall be subject to review by a proceeding
45 brought under and pursuant to article seventy-eight of the civil prac-
46 tice law and rules at the instance of the applicant for such license,
47 the holder of a license so revoked, suspended, fined, or reprimanded or
48 the person aggrieved.

49 § 2. This act shall take effect on the one hundred twentieth day after
50 it shall have become a law; provided, however, that the department of
51 state is authorized to propose, adopt, amend and/or repeal any rule or
52 regulation necessary for the implementation of this act immediately.