

# STATE OF NEW YORK

9080

## IN SENATE

June 15, 2018

Introduced by Sen. HAMILTON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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.

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12 160-hhhh. Owner requirements.

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17 160-mmmm. Appraiser independence; unlawful acts.

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27 160-wwww. Severability.

28 160-xxxx. Judicial review.

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

LBD14549-09-8

1 § 160-aaaa. Definitions. As used in this article, the following terms  
2 shall have the following meanings:

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

8 2. "Appraisal management company" or "AMC" means an individual or  
9 business entity that:

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

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

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

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

25 (a) administer an appraiser panel;

26 (b) recruit, retain or select appraisers;

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

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

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

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

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

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

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

44 (j) compensate appraisers for services rendered.

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

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

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

53 6. "Appraisal review" means the act or process of developing and  
54 communicating an opinion about the quality of another appraiser's work  
55 that was performed as part of an appraisal assignment. Appraisal reviews

1 must be performed by a person who is certified as a real estate  
2 appraiser pursuant to article six-E of this chapter.

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

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

11 9. "Controlling person" means:

12 (a) an owner, officer or director of an appraisal management company,  
13 or an individual who holds an ownership interest of ten percent or more  
14 of such company;

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

20 (c) an individual who possesses, directly or indirectly, the power to  
21 direct or cause the direction of the management or policies of an  
22 appraisal management company.

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

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

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

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

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

39 15. "Uniform standards of professional appraisal practice" or "USPAP"  
40 means the appraisal standards promulgated by the appraisal standards  
41 board of the appraisal foundation.

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

48 § 160-bbbb. Registration required. It shall be unlawful for a person  
49 to, directly or indirectly, engage or attempt to engage in business as  
50 an appraisal management company, or to advertise or hold oneself out as  
51 engaging in or conducting business as an appraisal management company  
52 without first obtaining a certificate of registration issued by the  
53 department under the provisions of this article.

54 § 160-cccc. Exemptions. The provisions of this article shall not apply  
55 to any person that exclusively employs appraisers for the performance of  
56 appraisals or to any appraisal management company that is a wholly-owned

1 subsidiary of a financial institution, which is regulated by the federal  
2 financial institution regulatory agency. The registration provisions of  
3 this article shall not apply to the state, any state agency or authori-  
4 ty, or any political subdivision of the state that employs appraisers.

5 § 160-dddd. Forms. An applicant for a certificate of registration as  
6 an appraisal management company shall submit an application on such  
7 forms as prescribed by the department.

8 § 160-eeee. Denial of registration. The department may investigate the  
9 good character of applicants for a certificate of registration under  
10 this article and may deny the issuance of such certificate of registra-  
11 tion based upon lack of good moral character which may include, but is  
12 not limited to, any of the grounds enumerated in this article. For the  
13 purposes of this article, a non-substantive ground for denial, revoca-  
14 tion, or surrender of an appraiser's license should not be construed as  
15 an automatic prohibition.

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.

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

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

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

21 § 160-jjjj. Employee requirements. 1. An appraisal management company  
22 that applies for a certificate of registration shall not knowingly  
23 employ, utilize, or engage, for any real estate appraisal, valuation  
24 service or appraisal review assignment, a person who has had a license  
25 or certificate to act as an appraiser in this state or in any other  
26 state denied, revoked, or surrendered in lieu of possible discipline,  
27 unless such license has been reinstated.

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

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

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

52 § 160-kkkk. Restrictions. An appraisal management company that applies  
53 for a certificate of registration shall not knowingly:

54 1. Employ any person in a position in which the person has the respon-  
55 sibility to order appraisals or valuation services or to review  
56 completed appraisals who has had a license, registration or certificate

1 to act as an appraiser in this state or in any other state, denied,  
2 revoked, or surrendered in lieu of a pending revocation, unless such  
3 license has been reinstated;

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

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

17 § 160-llll. Recordkeeping. Each appraisal management company shall  
18 maintain a detailed record of each service request that it receives and  
19 the real estate appraiser that performs such appraisal for the appraisal  
20 management company. Records shall be maintained for a period of at least  
21 five years after such appraisal is completed or two years after final  
22 disposition of a judicial proceeding related to such assignment, which-  
23 ever period expires later. Appraisal management companies shall make  
24 records available to the department upon request. Appraisal management  
25 companies shall also allow the department to examine the books and  
26 records of the appraisal management company and require it to submit  
27 reports, information and documents upon request. Appraisal management  
28 companies shall also allow the department to verify that the appraisers  
29 on such panel hold a valid license or certification.

30 § 160-mmmm. Appraiser independence; unlawful acts. Each appraisal  
31 management company shall ensure that real estate appraisals are  
32 conducted independently and free from inappropriate influence and coer-  
33 cion. Notwithstanding any other provision of this article, it shall be  
34 unlawful for any employee, director, officer, or agent of an appraisal  
35 management company registered in this state pursuant to this article to:

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

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

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

48 4. Act without just cause to withhold or threaten to withhold timely  
49 payment for an appraisal report or for other valuation services rendered  
50 with such appraisal report or services provided in accordance with the  
51 contract between parties;

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

54 6. Expressly or implicitly promise future business, promotions, or  
55 increased compensation for an appraiser in exchange for the real estate

1 appraiser inflating or deflating his or her appraised value of real  
2 property;

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

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

12 9. Request that an appraiser provide an estimated, predetermined, or  
13 desired valuation in an appraisal report, or provide estimated values or  
14 comparable sales at any time prior to the appraiser's completion of an  
15 appraisal;

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

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

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

30 § 160-nnnn. Mandatory reporting. An appraisal management company that  
31 has a reasonable basis to believe an appraiser within the appraisal  
32 management company's appraisal panel is failing to comply with the  
33 uniform standards of professional appraisal practice, is violating  
34 applicable laws, or is otherwise engaging in unethical or unprofessional  
35 conduct shall immediately refer such matter to the department.

36 § 160-oooo. Unprofessional conduct. 1. Appraisal management companies  
37 shall not engage in unprofessional conduct including, but not limited to  
38 the following:

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

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

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

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

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

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

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

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

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

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

29 (c) Knowingly fail to separate any and all fees charged to a client by  
30 the appraisal management company for the actual completion of an  
31 appraisal by an appraiser from the fees charged to a lender, client, or  
32 any other person by an appraisal management company for appraisal  
33 management services;

34 (d) Knowingly prohibit an appraiser from recording the fee that such  
35 appraiser was paid by the appraisal management company for the perform-  
36 ance of the appraisal within the appraisal report that is submitted by  
37 such appraiser to the appraisal management company;

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

45 (f) Knowingly allow the removal from rotation of an appraiser from an  
46 appraiser panel, without prior written notice to such appraiser with  
47 just cause; or

48 (g) Knowingly obtain, use, or pay for a second or subsequent appraisal  
49 or the ordering of an automated valuation model or any other valuation  
50 service in connection with a mortgage financing transaction unless there  
51 is a reasonable basis to believe that the initial appraisal was flawed  
52 or tainted and such basis is clearly and appropriately noted in the loan  
53 file, or unless such appraisal or automated valuation model is done  
54 pursuant to a bona fide pre- or post-funding appraisal review or quality  
55 control process. Nothing in this paragraph shall prohibit an AMC from  
56 obtaining additional appraisals if required by a lending program, or if



1 such additional appraisals are required by applicable local, state, or  
2 federal law.

3 § 160-pppp. Alteration of appraisal reports. An appraisal management  
4 company shall not alter, modify, or otherwise change a completed  
5 appraisal or valuation service report submitted by an appraiser by  
6 removing such appraiser's signature or seal or by adding information to,  
7 or removing information from such report with intent to change the valu-  
8 ation conclusion. An appraisal management company shall not require an  
9 appraiser to provide such appraisal management company with such  
10 appraiser's digital signature or seal.

11 § 160-qqqq. Enforcement. The department may revoke or suspend the  
12 license of an appraisal management company, or in lieu thereof may  
13 impose a fine, per violation, not to exceed twenty-five thousand dollars  
14 if the department finds that the licensee has made a material misstate-  
15 ment in the application for such license, or if such licensee has been  
16 found guilty of fraud or fraudulent practices, or for dishonest or  
17 misleading advertising, or has demonstrated untrustworthiness or incom-  
18 petency to act as an appraisal management company, or has violated any  
19 provision of this article or a regulation promulgated thereunder. The  
20 department shall report any such violations by appraisal management  
21 companies to the appraisal subcommittee.

22 § 160-rrrr. Disciplinary hearings. The department shall, before revok-  
23 ing or suspending any license or imposing any fine or reprimand on the  
24 holder thereof, and at least twenty days prior to the date set for the  
25 hearing, notify, in writing, the holder of such license of any charges  
26 made and shall afford such licensee an opportunity to be heard in person  
27 or by counsel in reference thereto. Such written notice may be served  
28 by personal delivery to the licensee, or by certified mail to the last  
29 known business address of such licensee or unlicensed person, or by any  
30 method authorized by the civil practice law and rules. The hearing on  
31 such charges shall be at such time and place as the department shall  
32 prescribe.

33 § 160-ssss. Power to suspend a license. In cases where the health,  
34 safety, or welfare of the public is endangered, the department shall  
35 have the authority to immediately suspend a license pending a hearing  
36 before an administrative law judge.

37 § 160-tttt. Investigation. The department shall have the power to  
38 enforce the provisions of this article and upon complaint of any person,  
39 or on its own initiative, to investigate any violation thereof or to  
40 investigate the business, business practices and business methods of an  
41 appraisal management company, if in the opinion of the department such  
42 investigation is warranted. Each such applicant or licensee shall be  
43 obliged, on request of the department, to supply such information as may  
44 be required concerning his or its business, business practices or busi-  
45 ness methods, or proposed business practices or methods.

46 For the purpose of enforcing the provisions of this article, and in  
47 making investigations relating to any violation thereof, and for the  
48 purpose of investigating the character, competency and integrity of the  
49 applicants or licensees hereunder, and for the purpose of investigating  
50 the business, business practices and business methods of any applicant  
51 or licensee, or of the officers or agents thereof, the department,  
52 acting by such officer or person in the department as the secretary of  
53 state may designate, shall have the power to subpoena and bring before  
54 the officer or person so designated any person in this state and require  
55 the production of any books, records or papers which he deems relevant  
56 to the inquiry and administer an oath to and take testimony of any

1 person or cause his or her deposition to be taken, except that any  
2 applicant or licensee or officer or agent thereof shall not be entitled  
3 to fees and/or mileage. A subpoena issued under this section shall be  
4 regulated by the civil practice law and rules.

5 § 160-uuuu. Rule-making authority. The department may adopt rules not  
6 inconsistent with the provisions of this chapter which may be reasonably  
7 necessary to implement, administer, and enforce the provisions of this  
8 chapter.

9 § 160-vvvv. Violations. 1. Any person or company who fails to obtain a  
10 certificate of registration required pursuant to this article shall be  
11 guilty of a misdemeanor.

12 2. Criminal actions for failure to obtain a certificate of registra-  
13 tion may also be prosecuted by the attorney general, or his or her depu-  
14 ty, in the name of the people of the state, and in any such prosecution  
15 the attorney general, or his or her deputy, may exercise all the powers  
16 and perform all the duties the district attorney is otherwise authorized  
17 to exercise or to perform therein.

18 § 160-www. Severability. Should the courts of this state declare any  
19 provision of this article unconstitutional, or unauthorized, or in  
20 conflict with any other section or provision of this article, such deci-  
21 sion shall affect only such section or provision so declared to be  
22 unconstitutional or unauthorized and shall not affect any other section  
23 or part of this article.

24 § 160-xxxx. Judicial review. The actions of the department in granting  
25 or refusing to grant or to renew a license under this article or in  
26 revoking or suspending such a license or imposing any fine or reprimand  
27 on the holder thereof or refusing to revoke or suspend such a license or  
28 impose any fine or reprimand shall be subject to review by a proceeding  
29 brought under and pursuant to article seventy-eight of the civil prac-  
30 tice law and rules at the instance of the applicant for such license,  
31 the holder of a license so revoked, suspended, fined, or reprimanded or  
32 the person aggrieved.

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