

STATE OF NEW YORK

8908

2019-2020 Regular Sessions

IN ASSEMBLY

December 30, 2019

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Banks

AN ACT to amend the financial services law, in relation to a compliance officer or compliance practitioner license

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

1 Section 1. The financial services law is amended by adding a new article 7 to read as follows:

ARTICLE 7

COMPLIANCE OFFICER OR COMPLIANCE PRACTITIONER LICENSE

Section 701. Definition.

702. Applicability; license.

703. License application.

704. Written examination.

705. Temporary license.

706. Fees.

707. License term; renewal.

708. Continuing education requirements.

709. Rules and regulations; authority of the superintendent.

§ 701. Definition. For purposes of this article, "compliance" shall mean: (a) drafting, evaluating, applying compliance or regulatory policies and procedures; (b) designing, assessing or implementing compliance or regulatory controls or systems; and (c) supervising, surveilling, monitoring, reviewing, testing or reporting non-compliance or misconduct. For purposes of this article, compliance tasks, duties and functions shall be performed only by an individual licensed or otherwise authorized to perform such tasks, duties or functions under the title of compliance officer, regulatory officer, compliance supervisor, compliance practitioner, compliance analyst, compliance consultant, compliance counsel, compliance advisor, regulatory officer, regulatory manager,

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

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1 regulatory supervisor, regulatory practitioner, regulatory analyst,
2 regulatory consultant, regulatory counsel or regulatory advisor.

3 § 702. Applicability; license. The superintendent may issue a compli-
4 ance officer or compliance practitioner license to any individual who is
5 trustworthy and competent to act as a compliance officer or compliance
6 practitioner in such manner as to safeguard the interests of the people
7 of this state and who has complied with all of the requirements set
8 forth in this article. The holder of a license under this section may
9 act as a compliance officer or compliance practitioner without any other
10 additional license. Every applicant for a license under this section
11 shall be twenty-one years of age or over at the time of the issuance of
12 such license.

13 § 703. License application. (a) Before a compliance officer or compli-
14 ance practitioner license or renewal thereof shall be issued by the
15 superintendent, an applicant shall file in the office of the superinten-
16 dent a written application for such license or renewal thereof. Such
17 application shall be in the form and contain information that the super-
18 intendent prescribes.

19 (b) An individual signing such application shall, simultaneous with
20 such application, submit to the superintendent fingerprints of his or
21 her two hands recorded in such manner as may be specified by the super-
22 intendent or his or her authorized representative. Before approving such
23 application, it shall be the duty of the superintendent or his or her
24 authorized representative to compare such fingerprints with fingerprints
25 filed with the division of criminal justice services. Such fingerprints
26 may also be submitted to the federal bureau of investigation for a
27 national criminal history record check.

28 (c) No such license shall be issued to any individual who has ever
29 been convicted of a felony, or of any crime or offense involving fraudu-
30 lent or dishonest practices nor shall a compliance officer or practi-
31 tioner licensed under this article be employed if such individual has
32 ever been convicted of a felony, or of any such crime or offense.

33 (d) Nothing contained in this section shall prevent the employment of
34 a compliance officer or compliance practitioner or the issuance of a
35 license to any individual who, subsequent to his or her conviction,
36 shall have received executive pardon therefor removing such disability,
37 or who has received a certificate of relief from disabilities or a
38 certificate of good conduct pursuant to article twenty-three of the
39 correction law to remove the disability under this article because of
40 such conviction or previous license revocation occasioned thereby.

41 § 704. Written examination. (a) The superintendent shall in order to
42 determine the trustworthiness and competency to act as a compliance
43 officer or compliance practitioner of each individual applicant for such
44 license, except in the case of a renewal license, require every such
45 individual to take and pass, to the satisfaction of the superintendent,
46 a personal written examination. No individual shall be deemed qualified
47 to take the examination without having demonstrated by evidence satis-
48 factory to the superintendent the following minimum qualifications: (1)
49 two years' experience in the financial industry, if the applicant
50 possesses a bachelors degree from an accredited school of higher educa-
51 tion, with involvement in regulatory oversight, compliance training or
52 other experience considered sufficient by the superintendent, or if the
53 applicant possesses a minimum of five years' practical experience in the
54 financial services industry with an involvement in regulatory oversight,
55 compliance training or other experience considered sufficient by the
56 superintendent; and (2) the applicant successfully completed thirty-five

1 hours of formal training in a course, program of instruction, or semi-
2 nars approved by the superintendent.

3 (b) The superintendent may prescribe the types of written examinations
4 according to the kinds of compliance issues the applicant may be
5 subjected to in the course of his or her duties.

6 (c) The superintendent may, in his or her discretion and on such terms
7 as he or she prescribes, dispense with such examination in the case of
8 any applicant who shall previously have held a position of compliance
9 officer or compliance practitioner for a minimum period of five years
10 prior to the effective date of this article; provided, further that the
11 applicant applies within two years following the date of termination of
12 such license.

13 (d) An individual who at any time served with the armed forces of the
14 United States, and who immediately prior to entering such military
15 service had been continuously engaged in bona fide operation in this
16 state as a compliance officer or compliance practitioner for a period of
17 five years, may within one year after termination of such military
18 service file with the superintendent an application in such form as he
19 or she prescribes, and upon the payment of the requisite license fee be
20 licensed by the superintendent as a compliance officer or compliance
21 practitioner without being required to take and pass such examination.

22 (e) The superintendent may exempt from the written examination
23 requirement an applicant who holds a license or certificate to practice
24 compliance issued to them upon examination, accredited and administered
25 by a regulatory compliance accreditation agency in any other state or
26 political subdivision of the United States or other country provided the
27 applicant's qualifications met the requirements in this state at the
28 time such license was issued and that jurisdiction recognizes reciprocity
29 of the validity of a license issued from the state of New York.

30 (f) The superintendent shall exempt from the written examination
31 requirement any official or employee of a government unit, agency or
32 instrumentality who is responsible for performing compliance tasks,
33 duties or functions as part of his or her official duties with such
34 governmental unit, agency or instrumentality.

35 § 705. Temporary license. (a) An individual who has had at least five
36 years' experience as a compliance officer or compliance practitioner in
37 a financial services industry and has made application for a license as
38 a compliance officer or compliance practitioner in New York may file
39 with the superintendent, in such form as the superintendent prescribes,
40 a written application for a temporary permit to perform the duties as
41 prescribed herein as a compliance officer or compliance practitioner
42 during the pendency of the application.

43 (b) Notwithstanding any provision contained in section seven hundred
44 four of this article, an applicant for a temporary license shall be
45 required to take and pass a personal written examination in accordance
46 with subsection (a) of section seven hundred four of this article. If
47 satisfied that the individual applying for such temporary permit has in
48 all other respects met the requirements of this article with respect to
49 the licensing of a compliance officer or compliance practitioner and is
50 qualified by training and experience as an employee of a financial
51 service provider or other financial industry related entity as a compli-
52 ance officer or compliance practitioner, the superintendent shall issue
53 such temporary permit to be effective for such period of time as the
54 superintendent may specify therein but, in no event, for a period in
55 excess of one hundred twenty days.

1 (c) The superintendent may summarily suspend or revoke any temporary
2 permit issued pursuant to this section upon ten days' notice in writing
3 to the temporary permittee of the superintendent's intention to do so.

4 § 706. Fees. (a) At the time of application for every compliance offi-
5 cer or compliance practitioner license and for every renewal thereof,
6 there shall be paid to the superintendent by each applicant a fee of
7 seventy-five dollars for each year or fraction thereof in which a
8 license shall be valid. Upon payment of such fee and the superinten-
9 dent's issuance of such license or renewal thereof, such license shall
10 also be valid for any one or more of the various licenses issued by the
11 superintendent for the licensing period or fraction thereof covered by
12 such payment.

13 (b) No license fee shall be required of any individual who served as a
14 member of the armed forces of the United States at any time and who
15 shall have been discharged, under conditions other than dishonorable, in
16 a current license period, for the duration of such period.

17 (c) Every individual applying to take a written examination shall at
18 the time of application pay to the superintendent, or at the discretion
19 of the superintendent, directly to any organization that is under
20 contract to provide examination services, a non-refundable examination
21 fee in an amount which is equal to the actual documented administrative
22 expense. If, however, the applicant should withdraw his or her applica-
23 tion or the superintendent should deny his or her application before the
24 license applied for is issued, the superintendent may refund the fee
25 paid by the applicant for the license applied for, excepting any exam-
26 ination fees required pursuant to this subsection.

27 (d) The superintendent may issue a replacement for a current license
28 which has been lost or destroyed. Before such replacement license shall
29 be issued, there shall be on file in the office of the superintendent a
30 written application for such replacement license, affirming under penal-
31 ty of perjury that the original license has been lost or destroyed,
32 together with a fee of fifteen dollars.

33 § 707. License term; renewal. (a) Every compliance officer license and
34 compliance practitioner license issued pursuant to this section shall be
35 for a term expiring on the thirty-first day of December of even numbered
36 years, and may be renewed for the ensuing two calendar years upon the
37 filing of an application in conformity with section seven hundred three
38 of this article. In the case of a license issued to a new applicant,
39 the superintendent may issue a license or a term of more than two years,
40 provided however, such term shall not exceed thirty months.

41 (b) If an applicant for a renewal license shall have been filed with
42 the superintendent by December thirty-first of the year of expiration,
43 the license sought to be renewed shall continue in full force and effect
44 either until the issuance by the superintendent of the renewal license
45 applied for or until five days after the superintendent shall have
46 refused to issue such renewal license and shall have given notice of
47 such refusal to the applicant.

48 (c) If such refusal is based on any grounds other than failure to pass
49 a written examination and if the applicant shall within thirty days
50 after such notice is given, notify the superintendent of their request
51 for a hearing on such refusal, the superintendent shall within a reason-
52 able time after receipt of such notice grant such a hearing, and he or
53 she may, in his or her discretion, reinstate such license.

54 § 708. Continuing education requirements. (a) The continuing education
55 requirements set forth in this section shall apply to all resident and
56 non-resident compliance officer or compliance practitioner licensees,

1 including any individual previously licensed whose license was not in
2 effect on the effective date of this article and who subsequently
3 obtains a license pursuant to the provisions of this article.

4 (b) During each biennial licensing period, a compliance officer or
5 compliance practitioner licensee shall satisfactorily complete courses
6 or programs of instruction or attend seminars as may be approved by the
7 superintendent equivalent to thirty-six credit hours of instruction.

8 (c) A licensee may use accumulated continuing education credits to
9 meet the requirement so long as the education credits are certified as
10 such by the superintendent and are approved by a regulatory compliance
11 accreditation agency or any other licensing authority within the finan-
12 cial services industry as a commensurate course of study in the finan-
13 cial industry pertaining to compliance and ethics.

14 (d) The following courses or programs of instruction, if successfully
15 completed, shall be deemed to meet the superintendent's standards for
16 continuing education:

17 (1) Courses or programs of instruction or seminars, approved as to
18 method and content by the superintendent covering portions of principle
19 branches of the finance industry related to the kinds of subjects
20 covered by the compliance officer or compliance practitioner license,
21 including but not limited to compliance regulation, law and practice,
22 regulatory examinations, regulatory enforcement proceedings, and liti-
23 gation, provided that:

24 (A) Such courses or programs shall be given by an accredited associ-
25 ation, degree conferring college or university whose curriculum is
26 registered with the education department at the time the individual
27 takes the course, whether such course is given as part of such curric-
28 ulum or separately, or by any other institution, association, trade
29 association or employer, which maintains equivalent standards of
30 instruction and which shall have been approved for such purpose by the
31 superintendent;

32 (B) The number of credit hours assigned to each course or program of
33 instruction shall be determined by the superintendent; and

34 (2) Continuing education as required by the state in which a non-resi-
35 dent resides and maintains an office, provided the superintendent deems
36 such requirements equivalent to New York continuing education require-
37 ments; provided, further, that if the state in which the non-resident
38 licensee resides and maintains an office does not have continuing educa-
39 tion requirements, or if the superintendent does not deem such require-
40 ments equivalent, the licensee must satisfy New York's continuing educa-
41 tion requirements.

42 (e) An individual who teaches an approved course of instruction or who
43 lectures at an approved seminar, and who is subject to these continuing
44 education requirements shall be granted the same number of credit hours
45 as would be granted to an individual taking and successfully completing
46 such course, seminar or program, provided that such credit hours shall
47 be credited only once for each approved course during any biennial
48 licensing period.

49 (f) Every individual subject to the continuing education requirements
50 set forth in this section, shall furnish in a form satisfactory to the
51 superintendent written certification attesting to the courses or
52 programs of instruction taken and successfully completed by such indi-
53 vidual. Such certification shall be signed by the sponsoring organiza-
54 tion or its authorized representative.

55 (g) (1) An individual who does not meet the applicable continuing
56 education requirements shall not be eligible to renew his or her

1 license. Such individual shall not be eligible to become relicensed
2 during the next biennial licensing period unless and until such individ-
3 ual has demonstrated to the satisfaction of the superintendent that the
4 continuing education requirements for the last biennial licensing period
5 were met.

6 (2) An individual whose license was not renewed pursuant to paragraph
7 one of this subsection who accumulates sufficient credit hours for the
8 prior licensing period to qualify for relicensing in the biennial
9 licensing period following such non-renewal, may not apply those same
10 credit hours toward the continuing education requirements for the
11 current biennial licensing period.

12 (h) (1) Any entity eligible to provide continuing education courses,
13 programs of instruction, or seminars shall file for approval by the
14 superintendent on a biennial basis, to conform with its areas of
15 instruction, a provider organization application and a course submission
16 application for each course, program, and seminar.

17 (2) The provider organization application shall include the names of
18 all instructors to be used during the biennial licensing period, and
19 instructors may be added during such period by notifying the superinten-
20 dent and paying the appropriate filing fee.

21 (3) The completed applications shall be returned in a timely manner,
22 as specified by the superintendent with a non-refundable filing fee of
23 two hundred dollars for each organization, fifty dollars for each
24 course, program, and seminar, and fifty dollars for each instructor.

25 (4) Approval of the application shall be at the discretion of the
26 superintendent.

27 (i) A licensee shall pay a biennial fee of ten dollars for any
28 license, for continuing education certification filing and recording
29 charges, to the superintendent, or, at the direction of the superinten-
30 dent, directly to an organization under contract to provide continuing
31 education administrative services.

32 § 709. Rules and regulations; authority of the superintendent. (a) In
33 order to carry out the purposes of this article, the superintendent may:

34 (1) prescribe the types of compliance licenses according to the kinds
35 of compliance duties inherent in the financial services industry; and

36 (2) issue protocols and procedures for licensing and certifying mini-
37 mum qualifications for compliance officers, compliance practitioners and
38 other individuals tasked with monitoring, evaluating, testing and
39 reporting non-compliance or misconduct in the financial services indus-
40 try.

41 (b) The superintendent shall establish and prescribe regulations that
42 are deemed necessary for the proper and adequate supervision of compli-
43 ance officers and compliance practitioners.

44 § 2. This act shall take effect on the thirtieth day after it shall
45 have become a law. Effective immediately, the addition, amendment and/or
46 repeal of any rule or regulation necessary for the implementation of
47 this act on its effective date are authorized to be made and completed
48 on or before such effective date.