STATE OF NEW YORK

4965

2019-2020 Regular Sessions

IN SENATE

April 2, 2019

Introduced by Sens. SKOUFIS, SAVINO -- read twice and ordered printed, and when printed to be committed 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:

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

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

§ 703. License application. (a) Before a compliance officer or compliance practitioner license or renewal thereof shall be issued by the superintendent, an applicant shall file in the office of the superintendent a written application for such license or renewal thereof. Such application shall be in the form and contain information that the superintendent prescribes.

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

(c) No such license shall be issued to any individual who has ever been convicted of a felony, or of any crime or offense involving fraudulent or dishonest practices nor shall a compliance officer or practitioner licensed under this article be employed if such individual has ever been convicted of a felony, or of any such crime or offense.

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

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

hours of formal training in a course, program of instruction, or seminars approved by the superintendent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Continuing education as required by the state in which a non-resident resides and maintains an office, provided the superintendent deems such requirements equivalent to New York continuing education requirements; provided, further, that if the state in which the non-resident licensee resides and maintains an office does not have continuing education requirements, or if the superintendent does not deem such requirements equivalent, the licensee much satisfy New York's continuing education requirements.

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

(f) Every individual subject to the continuing education requirements set forth in this section, shall furnish in a form satisfactory to the superintendent written certification attesting to the courses or programs of instruction taken and successfully completed by such individual. Such certification shall be signed by the sponsoring organization or its authorized representative.

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

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

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

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

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

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

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

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

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

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

(2) issue protocols and procedures for licensing and certifying minimum qualifications for compliance officers, compliance practitioners and other individuals tasked with monitoring, evaluating, testing and reporting non-compliance or misconduct in the financial services industry.

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

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