

STATE OF NEW YORK

6638--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 23, 2021

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 9 to read as follows:

ARTICLE 9

COMPLIANCE OFFICER OR COMPLIANCE PRACTITIONER LICENSE

Section 901. Definitions.

6 902. Applicability; license.

7 903. License application.

8 904. Written examination.

9 905. Temporary license.

10 906. Fees.

11 907. License term; renewal.

12 908. Continuing education requirements.

13 909. Rules and regulations; authority of the superintendent.

14 § 901. Definitions. For purposes of this article:

15 (a) "compliance" shall mean: (1) drafting, evaluating, applying
16 compliance or regulatory policies and procedures; (2) designing, assess-
17 ing or implementing compliance or regulatory controls or systems; and
18 (3) supervising, surveilling, monitoring, reviewing, testing or report-
19 ing non-compliance or misconduct. For purposes of this article, compli-
20 ance tasks, duties and functions shall be performed only by an individ-
21 ual licensed or otherwise authorized to perform such tasks, duties or
22 functions under the title of compliance officer, regulatory officer,
23 compliance supervisor, compliance practitioner, compliance analyst,
24 compliance consultant, compliance counsel, compliance advisor, regulato-

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

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1 ry officer, regulatory manager, regulatory supervisor, regulatory prac-
2 titioner, regulatory analyst, regulatory consultant, regulatory counsel
3 or regulatory advisor.

4 (b) "financial industry" and "financial services industry" shall not
5 include any portion of the financial industry or financial services
6 industry involving annuities.

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

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

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

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

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

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

1 applicant possesses a minimum of five years' practical experience in the
2 financial services industry with an involvement in regulatory oversight,
3 compliance training or other experience considered sufficient by the
4 superintendent; and (2) the applicant successfully completed thirty-five
5 hours of formal training in a course, program of instruction, or semi-
6 nars approved by the superintendent.

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

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

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

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

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

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

47 (b) Notwithstanding any provision contained in section nine hundred
48 four of this article, an applicant for a temporary license shall be
49 required to take and pass a personal written examination in accordance
50 with subsection (a) of section nine hundred four of this article. If
51 satisfied that the individual applying for such temporary permit has in
52 all other respects met the requirements of this article with respect to
53 the licensing of a compliance officer or compliance practitioner and is
54 qualified by training and experience as an employee of a financial
55 service provider or other financial industry related entity as a compli-
56 ance officer or compliance practitioner, the superintendent shall issue

1 such temporary permit to be effective for such period of time as the
2 superintendent may specify therein but, in no event, for a period in
3 excess of one hundred twenty days.

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

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

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

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

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

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

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

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

1 § 908. Continuing education requirements. (a) The continuing education
2 requirements set forth in this section shall apply to all resident and
3 non-resident compliance officer or compliance practitioner licensees,
4 including any individual previously licensed whose license was not in
5 effect on the effective date of this article and who subsequently
6 obtains a license pursuant to the provisions of this article.

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

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

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

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

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

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

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

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

52 (f) Every individual subject to the continuing education requirements
53 set forth in this section, shall furnish in a form satisfactory to the
54 superintendent written certification attesting to the courses or
55 programs of instruction taken and successfully completed by such indi-

1 vidual. Such certification shall be signed by the sponsoring organiza-
2 tion or its authorized representative.

3 (g) (1) An individual who does not meet the applicable continuing
4 education requirements shall not be eligible to renew his or her
5 license. Such individual shall not be eligible to become relicensed
6 during the next biennial licensing period unless and until such individ-
7 ual has demonstrated to the satisfaction of the superintendent that the
8 continuing education requirements for the last biennial licensing period
9 were met.

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

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

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

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

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

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

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

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

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

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

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