



S.B. 76

124th General Assembly
(As Introduced)

Sen. Harris

BILL SUMMARY

- Modifies the Mortgage Brokers Law with respect to exemptions from the Law, issuance of mortgage broker certificates of registration, transfers of an interest in a registrant, persons responsible for the operations of a mortgage broker business, licensure of loan officers, examination and continuing education requirements, surety bond requirements, advertising, record retention, confidentiality of information, mortgage loan origination disclosure statements, bona fide third party fees, prohibitions and penalties, disciplinary actions, and violations of the Consumer Sales Practices Act.

CONTENT AND OPERATION

Regulation of mortgage brokers

Registration required; exemptions

(secs. 1322.01(G), (L), and (M) and 1322.02(A) and (C))

The Mortgage Brokers Law (secs. 1322.01 to 1322.12 of the Revised Code) currently prohibits any person from acting as a mortgage broker without first having obtained a certificate of registration from the Superintendent of Financial Institutions for every office to be maintained by the person for the transaction of business. "**Mortgage broker**" is defined as a person that, in the regular course of business, holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives money or other valuable consideration for providing this assistance. The law provides specific exemptions from the definition of mortgage broker, including exemptions for (1) persons that make or collect loans, to the extent these activities are subject to licensure or registration by the state, (2) lenders approved by the U.S. Secretary of Housing and Urban Development for participation in a mortgage insurance program, (3) banks, savings banks, savings and loan associations, and credit unions, (4) budget and

debt counseling services, (5) consumer reporting agencies, (6) mortgage bankers, (7) political subdivisions and governmental entities, and (8) colleges and universities.

The bill amends the definition of "mortgage broker," removes the list of exemptions from the definition, and, instead, expressly exempts certain persons from the Mortgage Brokers Law. Under the bill, a "**mortgage broker**" is any of the following:

(1) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender money or other valuable consideration for providing this assistance;

(2) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker, and charges or receives from the mortgage broker money or other valuable consideration readily convertible into money for providing the information;

(3) A person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans. (For purposes of the bill, a "**table-funding mortgage loan**" is a mortgage loan transaction in which the mortgage is initially payable to the mortgage broker, the mortgage broker does not use the mortgage broker's own funds to fund the transaction, and, by the terms of the mortgage or other agreement, the mortgage is simultaneously assigned to another person. A "**warehouse-lending mortgage loan**" is a mortgage loan transaction in which the mortgage is initially payable to the mortgage broker, the mortgage broker uses the mortgage broker's own funds to fund the transaction, and the mortgage is sold or assigned before the mortgage broker receives a scheduled payment on the mortgage.)

Under the bill, the following persons are exempt from the Mortgage Brokers Law *only with respect to business engaged in or authorized by their charter, license, authority, approval, or certificate*:

- (1) A bank, savings bank, savings and loan association, or credit union;
- (2) A budget and debt counseling service;
- (3) A consumer reporting agency;
- (4) Any political subdivision or governmental entity;
- (5) A college or university;

(6) A person registered under the Mortgage Loan Law, provided that not more than 5% of the person's mortgage loans constitute table-funding mortgage loans or warehouse-lending mortgage loans;

(7) A mortgage banker. For purposes of the bill, "**mortgage banker**" means any person that makes, services, buys, or sells mortgage loans and that meets at least one of the following criteria:

(a) The person has been directly approved by the U.S. Department of Housing and Urban Development as a nonsupervised mortgagee with participation in the direct endorsement program. This exemption does *not* include a mortgagee approved as a loan correspondent.

(b) The person has been directly approved by the Federal National Mortgage Association as a seller/servicer.

(c) The person has been directly approved by the Federal Home Loan Mortgage Corporation as a seller/servicer.

(8) A person created solely for the purpose of securitizing loans secured by an interest in real estate, provided the person does not service the loans. (For purposes of the bill, "**securitizing**" means the packaging and sale of mortgage loans as a unit for sale as investment securities, but only to the extent of those activities.)

The bill also exempts from the Mortgage Brokers Law any individual who is employed by a person that is exempt from the Law, to the extent the individual is acting within the scope of the individual's employment.

Application for a certification of registration; investigation; renewal

(secs. 1322.01(C) and (H), 1322.03(A), (B), (D), and (E), and 1322.04)

Current law requires every application for a certificate of registration as a mortgage broker, and every renewal application, to be accompanied by a fee of \$350 for each location of an office to be maintained by the applicant. The bill specifies that these fees are "nonrefundable," and exempts any applicant that is registered under the Mortgage Loan Law from payment of the fees. It also states that, if a check or other draft instrument is returned to the Superintendent for insufficient funds, the certificate of registration issued in reliance on the check or other draft instrument is to be canceled immediately without a hearing and the registrant is to cease activity as a mortgage broker.

Additionally, the bill revises what information is required to be included in an application. Under current law, an applicant that is a partnership must

designate one of the partners as responsible for managing the operations of the business. A corporate applicant must designate one of the shareholders as responsible for business operations, and an applicant that is any other entity must designate a natural person that owns 5% or more of the entity as responsible for managing the operations of the business.

Under the bill, any applicant that is a partnership, corporation, limited liability company, or other business entity or association is to designate an employee or owner of the applicant as the applicant's operations manager. (An "**operations manager**" is defined as the individual responsible for the everyday operations, compliance requirements, and management of a mortgage broker business. "**Employee**" is defined as an individual for whom a mortgage broker, in addition to providing a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and federal income taxes. "Employee" also includes any shareholder, member, or partner of a registrant who acts as a loan officer or operations manager of the registrant, but for whom the registrant is prevented by law from making income tax withholdings.) The bill states that, while acting as the operations manager, an employee or owner cannot be employed by any other mortgage broker.

The bill removes transitional language that provided for the phasing-out of a prior educational requirement for persons designated as responsible for the operation of a mortgage broker business. Consequently, under current law as well as the bill, the operations manager is subject only to an *experience* requirement. Under that requirement, evidence must be provided in the application that the operations manager possesses at least three years of experience in the mortgage and lending field or at least three years of other experience related specifically to the business of mortgage loans that the Superintendent determines meets the requirements of this provision. The bill also requires the applicant to show that its operations manager has successfully completed an examination prescribed by the Superintendent and, for purposes of registration renewals on and after January 1, 2003, that the operations manager has completed the required hours of continuing education (see below).

Current law requires a foreign corporation to provide evidence in its application that it maintains a license to transact business in Ohio. The bill applies this requirement to all foreign business entities that apply for a certificate of registration.

With respect to past convictions, applicants currently are required to provide a statement that the applicant has not been convicted of or pleaded guilty to a felony criminal offense or any criminal offense involving fraud. Under the bill, the statement must be as to *whether* the applicant *or, to the best of the applicant's knowledge, any shareholder, member, partner, operations manager, or*

employee of the applicant has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking or any criminal offense involving money or securities. In addition, the bill requires an applicant to provide a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, operations manager, or employee of the applicant has been subject to any adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty. If the applicant or any of those other persons has pleaded guilty to or been convicted of such an offense, or has been subject to such a judgment, the Superintendent is required to issue a certificate of registration *if* (1) the applicant has proven to the Superintendent, by a preponderance of the evidence, the applicant's or other person's activities and employment record since the conviction or judgment show that the applicant or other person is honest, truthful, and of good reputation, and (2) there is no basis in fact for believing that the applicant or other person will commit the offense or be subject to such a judgment again.

If an application does not contain all of the information required, and if that information is not submitted to the Superintendent within 90 days after the Superintendent requests the information in writing, the bill permits the Superintendent to consider the application withdrawn.

Current law requires the Superintendent, upon receiving an application, to conduct an investigation of the applicant. Under the bill, that investigation must include a criminal records check based on the applicant's fingerprints and a civil records check.

Lastly, the bill states that a certificate of registration, or the authority granted under such a certificate, is not transferable or assignable and cannot be franchised by contract or any other means.

Transfer of an interest in a registrant

(sec. 1322.021)

The bill requires a registrant that is a corporation, limited liability company, partnership, trust, or other business entity or association to notify the Division of Financial Institutions of every sale, transfer, or hypothecation of any stock, security, membership, partnership, or other equitable, beneficial, or ownership interest in the entity or association, if the interest represents at least a 5% membership, partnership, or other equitable, beneficial, or ownership interest in the entity or association.

Every person that acquires or otherwise receives such an interest is subject to the Mortgage Brokers Law. The bill permits the Division to make any investigation necessary to determine whether any fact or condition exists that, if it had existed at the time of the original application for a certificate of registration, the fact or condition would have warranted the Division to deny the application. If such a fact or condition is found, the Division may, in accordance with the Administrative Procedure Act, revoke the registrant's certificate.

Surety bond requirement

(sec. 1322.05)

The Mortgage Brokers Law currently requires each registrant to obtain a corporate surety bond for the exclusive benefit of any person injured by a violation of the Law. The bond must be in the penal sum of at least \$25,000 and an additional penal sum of \$5,000 for each location, in excess of one, at which the registrant conducts business.

The bill increases the required amount of the bond to \$50,000, and to \$10,000 for each location in excess of one. The bill requires a registrant, in addition to obtaining a bond, to *maintain* the bond *in effect at all times*. It states that the term of the bond must coincide with the term of registration, and that the bond is for the exclusive benefit of any *buyer* injured by a violation of the Mortgage Brokers Law.

Current law requires a registrant to give notice to the Superintendent of any action that is brought against the registrant and of any judgment that is entered against the registrant by a person injured by a violation of the Mortgage Brokers Law. Under the bill, notice is required of any action brought *by a buyer* against the registrant *or loan officer of the registrant alleging injury by a violation of the Mortgage Brokers Law*, as well as of any judgment entered against the registrant *or loan officer by a buyer* injured by such a violation.

Lastly, the bill requires a registrant to cease all mortgage broker activity in this state if the registrant fails to comply with the surety bond requirement.

Advertising: required disclosures

(secs. 1322.09 and 1322.11(A)(1))

Mortgage brokers are currently required to disclose, in any printed or published advertisement relating to the mortgage broker's services, the number designated on the mortgage broker's certificate of registration. The bill requires that the name and street address of the mortgage broker also be disclosed, and expands the application of this provision to any "televised, broadcast, or

electronically transmitted" advertisement, "including on any electronic site accessible through the internet."

The bill permits a buyer injured by a violation of this provision to bring an action for recovery of damages.

Record retention; confidentiality of information

(secs. 1322.06 and 1322.061)

Under existing law, a registrant is required to maintain records pertaining to its mortgage broker business for two years after the final entry on such records. The bill requires that such records be maintained for "four years."

The bill also revises the provisions of current law dealing with confidentiality of information. Under existing law, all information obtained by the Superintendent or the Superintendent's deputies, examiners, assistants, agents, or clerks, including information obtained in the course of examining a registrant or investigating an applicant for a certificate of registration, is privileged and confidential for all purposes except when it is necessary for the Superintendent to take official action regarding the affairs of the registrant or in connection with criminal proceedings.

Under the bill, the following information is privileged and confidential:

- (1) Examination information, and any information leading to or arising from an examination;
- (2) Investigation information, and any information arising from or leading to an investigation.

The information must remain privileged and confidential for all purposes except when it is necessary for the Superintendent to take official action regarding the affairs of a registrant, or in connection with civil or criminal investigations or proceedings conducted by the Attorney General or a county prosecutor. The Superintendent may share examination and investigation information with any law enforcement agency or any other state or federal regulatory agency. Any information shared with the Attorney General, a county prosecutor, or a law enforcement agency or other state or federal regulatory agency must remain privileged and confidential and can only be used in connection with an official investigation, proceeding, or action.

The bill provides that all application information is a public record, but specifically excludes social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts

are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information.

Mortgage loan origination disclosure statements

(secs. 1322.062 and 1322.11(A)(1))

The bill requires a registrant, within three business days after taking an application for a loan from a buyer, to deliver to the buyer a mortgage loan origination disclosure statement that contains all of the following:

- (1) The name, address, and telephone number of the buyer;
- (2) The signature of the loan officer or registrant;
- (3) A statement indicating whether the buyer is to pay for the services of a bona fide third party if the registrant is unable to assist the buyer in obtaining a mortgage;
- (4) A statement that describes the method by which the fee to be paid by the buyer to the registrant will be calculated;
- (5) A statement that the lender may pay additional compensation to the registrant;
- (6) A description of all of the services the registrant has agreed to perform for the buyer;
- (7) A statement that the buyer has not entered into an exclusive agreement for brokerage services.

If there is any change in the information provided under (4) or (6), above, the registrant must provide the buyer with the revised mortgage loan origination disclosure statement no later than three days after the change occurs, or the date the loan is closed, whichever is earlier.

The bill permits a buyer injured by a violation of this provision to bring an action for recovery of damages.

Bona fide third party fees; special account

(sec. 1322.08)

The bill expressly requires each registrant to maintain a special account in which the registrant is to deposit any bona fide third party fee the registrant

receives. Likewise, a registrant is to pay the fees to the bona fide third party from the registrant's special account.

Under current law, a registrant is generally prohibited from receiving fees for assisting a buyer until all of the services that the registrant has agreed to perform are completed and the proceeds of the mortgage loan have been disbursed. However, certain fees may be paid for services performed by a bona fide third party *if* the fees are paid directly by the buyer to the bona fide third party or the fees are deposited by the registrant into the registrant's special account. Those fees include (1) fees to obtain a credit report, (2) fees for notary services, (3) fees authorized by law to record, file, or release a security interest or mortgage, (4) fees for the performance of a title search, appraisal, or survey, and (5) fees charged by a lender for locking in an interest rate. The bill removes from this list the fees described in (3), above.

(Under current law, "**special account**" is defined as a depository account with a financial institution that is separate and distinct from any personal or other account of the registrant and that is maintained solely for the holding and payment of fees for services performed by bona fide third parties and received by the registrant from buyers that the registrant assists in obtaining mortgages. **Bona fide third party**" means a person that is not an employee of, related to, or affiliated with, the registrant.)

Regulation of loan officers

License required

(secs. 1322.01(E), 1322.02(B), and 1322.031(E) and (F))

The bill prohibits any person, on the person's own behalf or on behalf of any other person, from acting as a loan officer without first having obtained a license from the Superintendent of Financial Institutions. A loan officer cannot be employed by more than one mortgage broker at any one time.

For purposes of the bill, **loan officer**" is defined as an employee who originates mortgage loans in consideration of direct or indirect gain, profit, fees, or charges. "Loan officer" also includes an employee who solicits financial and mortgage information from the public for sale to another mortgage broker. The term does not include an independent contractor of, or person having a similar relationship with, a mortgage broker.

The business of a loan officer is to principally be transacted at an office of the employing mortgage broker, which office is registered in accordance with current law. Each original license must be deposited with and maintained by the

employing mortgage broker at the mortgage broker's main office. A copy of the license must be maintained and displayed at the office where the loan officer principally transacts business.

If a loan officer's employment is terminated, the mortgage broker is required to return the original license to the Superintendent within 30 days after the termination. The bill permits a licensee to (1) request the transfer of the license to another mortgage broker by submitting a relocation application, along with a \$15 fee, to the Superintendent, or (2) request the Superintendent in writing to hold the license in escrow for a period not to exceed one year. Any licensee whose license is held in escrow must cease activity as a loan officer.

The bill states that a license, or the authority granted under such a license, is not transferable or assignable and cannot be franchised by contract or any other means.

Application for a license; investigation

(sec. 1322.031(A) to (D))

An application for a license as a loan officer must be in writing, under oath, and in the form prescribed by the Superintendent. It must be accompanied by a nonrefundable application fee of \$100.

The application must provide all of the following:

- (1) The name and address of the applicant;
- (2) A statement as to whether the applicant has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities;
- (3) A statement as to whether the applicant has been subject to an adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty;
- (4) Any further information that the Superintendent requires.

Upon the filing of an application, the Superintendent is required to investigate the applicant. The investigation must include a criminal records check based on the fingerprints of the applicant and a civil records check. If, in order to issue a license to an applicant, investigation by the Superintendent outside Ohio is necessary, the Superintendent may require the applicant to advance sufficient funds to pay the actual expenses of the investigation, if it appears that these

expenses will exceed \$100. The Superintendent is to provide the applicant with an itemized statement of the actual expenses that the applicant is required to pay.

All funds advanced and application and renewal fees paid to the Superintendent under the bill are to be paid by the Superintendent to the Treasurer of State to the credit of the Consumer Finance Fund created under current law.

If an application for a license does not contain all of the information required under the bill, and if that information is not submitted to the Superintendent within 90 days after the Superintendent requests the information in writing, the Superintendent may consider the application withdrawn.

Issuance of a license; renewal

(sec. 1322.041)

Upon the conclusion of an investigation, the Superintendent must issue a loan officer license to the applicant if the Superintendent finds that the following conditions are met:

(1) The application is accompanied by the application fee. If a check or other draft instrument is returned to the Superintendent for insufficient funds, any license issued in reliance on the check or other draft instrument is to be canceled immediately without a hearing, and the licensee must cease activity as a loan officer.

(2) The applicant complies with the Mortgage Brokers Law;

(3) The applicant has not been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities, or, if the applicant has been convicted of or pleaded guilty to such an offense, the applicant has proven to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant will commit the offense again.

(4) The applicant has not been subject to an adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty, or, if the applicant has been subject to such a judgment, the applicant has proven to the Superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the judgment show that the applicant is honest, truthful, and of good

reputation, and there is no basis in fact for believing that the applicant will be subject to such a judgment again.

(5) The applicant's character and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the Mortgage Brokers Law.

A loan officer license may be renewed annually on or before April 30, if the Superintendent finds that all of the following conditions are met:

(1) The renewal application is accompanied by a nonrefundable renewal fee of \$100. If a check or other draft instrument is returned to the Superintendent for insufficient funds, any license issued in reliance on the check or other draft instrument is to be canceled immediately without a hearing, and the licensee must cease activity as a loan officer.

(2) On and after January 1, 2003, the loan officer has completed, during the immediately preceding calendar year, at least six hours of continuing education as required under the bill (see below).

(3) The applicant meets the conditions set forth in (2) to (5), above.

(4) The applicant's license is not subject to an order of suspension or revocation by the Superintendent.

If a license renewal application or renewal fee is received by the Superintendent after April 30, the license is not to be considered renewed, and the applicant must cease activity as a loan officer.

Examination and continuing education requirements

(secs. 1322.03(A)(9), 1322.04(A)(9) and (B), 1322.041(B)(2), 1322.051, and 1322.052)

The bill requires each person designated to act as operations manager for a mortgage broker business to submit to an examination approved by the Superintendent of Financial Institutions. Evidence of the successful completion of that examination is required for the issuance of a certificate of registration and for the renewal of such a certificate.

The bill also requires each licensee, within 90 days after the original issuance of the loan officer license, to successfully complete an examination approved by the Superintendent. Failure to comply with this requirement results in the termination of the license by operation of law.

On and after January 1, 2002, each licensee and each person designated to act as operations manager for a mortgage broker business is required by the bill to complete at least six hours of continuing education every calendar year. To fulfill this requirement, the six hours of continuing education must be offered in a course or program of study approved by the Superintendent. Compliance with this requirement is a condition to the renewal of a loan officer license or of a mortgage broker certificate of registration, as the case may be.

Prohibitions; penalties

(secs. 1322.07 to 1322.074 and 1322.99)

The bill modifies the prohibitions and penalties provided in the Mortgage Brokers Law, expands their application, and adds additional prohibitions, as follows:

--Current law prohibits any registrant or applicant for a certificate of registration from doing any of the following:

(1) Obtaining a certificate of registration through any false or fraudulent representation or making any substantial misrepresentation in any registration application;

(2) Making false promises through advertising or other means or engaging in a continued course of misrepresentations;

(3) Engaging in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) Failing to notify the Division of Financial Institutions if the registrant or applicant is convicted of or pleads guilty to a felony criminal offense or any criminal offense involving fraud.

Under the bill, these prohibitions apply to mortgage brokers, licensees, and applicants for a loan officer license, as well as to registrants and applicants for a certificate of registration. The prohibition set forth in (1), above, is modified by the bill to prohibit obtaining a certificate of registration or license "through any false representation in any registration or license application." The prohibition set forth in (2), above, is modified to prohibit making "false or misleading statements or false promises through advertising or other means." In (4), above, the bill specifies that the notice be provided "within 30 days" after being convicted of or pleading guilty to "any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities."

In addition, the bill prohibits all of the following:

(5) Making, proposing, or soliciting fraudulent, false, or misleading statements on any mortgage document or on any document related to a mortgage, including a mortgage application, real estate appraisal, or real estate settlement or closing document. For purposes of the bill, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

(6) Instructing, soliciting, proposing, or otherwise causing a buyer to sign in blank a mortgage related document;

(7) Engaging in table-funding or warehouse-lending mortgage loans, other than first lien mortgage loans, without first obtaining a certificate of registration under the Mortgage Loan Law.

Under the bill, the penalty for a violation of (1) or (2), above, is a felony of the fourth degree, and the penalty for a violation of (4) or (7), above, is a felony of the fifth degree. With respect to a violation of (3) or (5), above, the penalty is determined on the basis of the value of the mortgage involved in the offense and the age of the buyer, as follows:

	<i>Mortgage is less than \$100,000</i>	<i>Mortgage is \$100,000 or more</i>
<i>Buyer is under 65 years of age</i>	fourth degree felony and fine of up to \$5,000	third degree felony and fine of up to \$10,000
<i>Buyer is 65 or older</i>	third degree felony and fine of up to \$25,000	second degree felony and fine of up to \$30,000

--The bill prohibits any person from operating a net branch in this state. A violation of this prohibition is a felony of the fourth degree.

For purposes of the bill, "**net branch**" is defined as a contractual arrangement under which a person who is not registered as a mortgage broker holds the person's self out as engaging in the mortgage broker business under the authority of a registrant or under an exemption to the registration requirement, and any of the following applies:

(1) The person is directly or indirectly responsible for rent, utilities, advertising, equipment, or other office expenses.

(2) The person is responsible for office expenses if funds are not available from an operating account.

(3) The person is directly or indirectly responsible for hiring, firing, payroll, or other personnel staffing issues and expenses.

(4) The person directly or indirectly pays the registrant or exempt person a fee for every closed loan transaction.

(5) The compensation of the person is the profit left over after expenses.

(6) The person pays the registrant or exempt person a fee to operate a net branch, to use the number designated on the registrant's certificate of registration, or to use the exempt person's name.

--The bill prohibits any mortgage broker, registrant, or licensee from doing any of the following:

(1) Retaining original documents provided to the registrant or licensee by the buyer in connection with the loan application, including income tax returns, account statements, or other financial related documents;

(2) Receiving, directly or indirectly, a premium on the fees charged for services performed by a bona fide third party;

(3) Paying or receiving, directly or indirectly, a referral fee or kickback of any kind to or from a bona fide third party or other party with a related interest in the transaction, such as a home improvement builder, real estate developer, or real estate broker or agent, for the referral of business.

A violation of this prohibition is a felony of the fourth degree.

--The bill prohibits any person from circumventing, interfering with, obstructing, or failing to cooperate in any examination or investigation conducted by the Superintendent of Financial Institutions, including making a false or misleading statement, failing to produce records, intimidating or suborning any witness, or tampering with, altering, hiding, or manufacturing any evidence.

A violation of this prohibition is a felony of the third degree.

--The bill prohibits any person from acquiring, selling, transferring, or hypothecating any interest in a registrant or an applicant for a certificate of registration in order to obfuscate or conceal the true ownership or control of the registrant or applicant.

Disciplinary actions; action for damages

(secs. 1322.10(A)(1) and (E) and 1322.11)

Current law authorizes the Superintendent of Financial Institutions to suspend, revoke, or refuse to issue or renew a certificate of registration if the Superintendent finds a violation of specified provisions of the Mortgage Brokers Law. The bill extends the application of this provision to licensees, and permits the Superintendent to take any of those actions if the Superintendent finds:

(1) A violation of or failure to comply with *any* provision of the Mortgage Brokers Law or any other law applicable to the business conducted under a certificate of registration; or

(2) A conviction of or guilty plea to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

Under the bill, if the Superintendent revokes the certificate of registration or license of a registrant or licensee who is convicted of or plead guilty to a criminal violation of any provision of the Mortgage Brokers Law or any criminal offense described in (2), above, the revocation is permanent.

The bill also modifies and expands the violations for which an injured buyer may bring an action for recovery of damages (see sec. 1322.11(A)(1)).

Violation of the Consumer Sales Practices Act

(sec. 1345.15)

Under the bill, any person that is *not* registered or licensed under the Mortgage Brokers Law and that, with knowledge, violates specific provisions of the Law (sec. 1322.02(A) or (B), 1322.07(B), (C), (E), or (F), or 1322.071), is deemed to have committed an unfair or deceptive act or practice in violation of the Consumer Sales Practices Act (Chapter 1345.). Under that Act, the Attorney General is authorized to investigate alleged violations and to seek civil penalties and remedies.

Additionally, any person that *is* registered or licensed under the Mortgage Brokers Law and that, with knowledge, violates specific provisions of the Law (sec. 1322.07 (B), (C), (E), or (F)), is deemed to have committed an unfair or deceptive act or practice in violation of the Consumer Sales Practices Act, *if* evidence of the alleged violation is included in the examination report of the Division of Financial Institutions.

For purposes of these provisions, "**knowledge**" means actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

The bill states that, notwithstanding the authority granted the Attorney General under the Consumer Sales Practices Act, the Superintendent of Financial Institutions retains exclusive authority to adopt rules with respect to the violations of the Mortgage Brokers Law that, pursuant to the bill, are deemed unfair or deceptive acts or practices in violation of the Act.

Effective date; transition

(Sections 3 and 4)

The bill provides that it is to take effect six months after the bill's effective date. It also states that it is the intent of the General Assembly that the Superintendent of Financial Institutions take any action necessary to provide for an orderly transition for those persons who, on the effective date of the bill, perform the functions, duties, or powers prescribed for registrants and licensees under the bill. Consequently, the Division of Financial Institutions is to accept registration and license applications submitted by such persons beginning on the effective date of the bill and to make every effort possible to act upon the applications within the six-month period immediately following that date.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-20-01	p. 225

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