

SECOND REGULAR SESSION

# HOUSE BILL NO. 2134

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES ZWEIFEL (Sponsor), TALBOY, PAGE, WALSH, YAEGER, BAKER (25), BURNETT, WILDBERGER, LeVOTA, ROBINSON, SPRENG, WHORTON, SCHIEFFER, LOW (39), DARROUGH AND ZIMMERMAN (Co-sponsors).

Read 1st time February 13, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 443, RSMo, by adding thereto one new section relating to mortgage brokers, with a penalty provision.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 443, RSMo, is amended by adding thereto one new section, to be known as section 443.895, to read as follows:

- 443.895. 1. A mortgage broker has created an agency relationship with a borrower, as defined in section 443.803, when the mortgage broker acts in the capacity of a mortgage broker. A mortgage broker shall clearly and conspicuously disclose to the person or persons attempting to obtain a mortgage loan whether the mortgage broker is acting as an agent for the person or persons, in a separate writing, and provide such disclosure to the person or persons attempting to obtain the mortgage loan before any personal financial information may be obtained by the mortgage broker. If a mortgage broker is obtaining personal information over the telephone, the mortgage broker shall give the disclosure verbally at such time and mail the written disclosure within two business days.**
- 2. A mortgage broker with an agency relationship with a borrower shall do all of the following:**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12           **(1) Act in the borrower's best interest and in the utmost good faith toward the**  
13 **borrower and shall not compromise the borrower's right or interest in favor of another**  
14 **person's right or interest, including the mortgage broker's right or interest;**

15           **(2) Carry out all lawful instructions of the borrower;**

16           **(3) Disclose to a borrower all material facts of which the mortgage broker has**  
17 **knowledge that might reasonably affect the borrower's rights, interest, or ability to receive**  
18 **the borrower's intended benefit from the mortgage loan, but not facts that are reasonably**  
19 **susceptible to the knowledge of the borrower;**

20           **(4) Use reasonable care in performing duties;**

21           **(5) Account to a borrower for all of the borrower's moneys and property the**  
22 **mortgage broker receives as the agent.**

23           **3. A mortgage broker with an agency relationship with the borrower shall not**  
24 **accept, give, or charge any undisclosed compensation or realize any undisclosed**  
25 **remuneration, either through direct or indirect means, that inures to the benefit of the**  
26 **mortgage broker on an expenditure made for the borrower.**

27           **4. This section shall not prohibit a mortgage broker from contracting for or**  
28 **collecting a fee for services rendered that has been disclosed to the borrower in advance**  
29 **of the provision of the services.**

30           **5. This section shall not require a mortgage broker to obtain a loan containing**  
31 **terms or conditions not available to the mortgage broker in the mortgage broker's usual**  
32 **course of business or to obtain a loan for the borrower from a mortgage lender with whom**  
33 **the mortgage broker does not have a business relationship.**

34           **6. As used in this section, "mortgage broker" means a person who, for**  
35 **compensation or anticipation of compensation, arranges, negotiates, or attempts to arrange**  
36 **or negotiate mortgage loans or commitments for such loans, refers applicants or**  
37 **prospective applicants to creditors, or selects or offers to select creditors to whom requests**  
38 **for credit may be made.**

39           **7. Any mortgage broker who violates the provisions of this section shall be deemed**  
40 **guilty of a class B misdemeanor and shall be liable for damages caused to a borrower as**  
41 **determined by a court of law in a suit brought by the borrower so damaged.**

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