SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2188

94TH GENERAL ASSEMBLY

Reported from the Special Committee on Financial Institutions, March 6, 2008 with recommendation that House Committee Substitute for House Bill No. 2188 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules March 12, 2008 with recommendation that House Committee Substitute for House Bill No. 2188 Do Pass, with no time limit for debate on Perfection.

Taken up for Perfection April 1, 2008. House Committee Substitute for House Bill No. 2188 ordered Perfected and printed.

D. ADAM CRUMBLISS, Chief Clerk

4918L.03P

AN ACT

To repeal sections 339.100, 339.532, 443.809, 443.810, and 443.891, RSMo, and to enact in lieu thereof nine new sections relating to mortgage fraud, with penalty provisions.

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

Section A. Sections 339.100, 339.532, 443.809, 443.810, and 443.891, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 339.100, 339.175, 339.532, 339.543, 443.809, 443.810, 443.891, 443.930, and 570.310, to read as follows:

339.100. 1. The commission may, upon its own motion, and shall upon receipt of a written complaint filed by any person, investigate any real estate-related activity of a licensee licensed under sections 339.010 to 339.180 and sections 339.710 to 339.860 or an individual or entity acting as or representing themselves as a real estate licensee. In conducting such investigation, if the questioned activity or written complaint involves an affiliated licensee, the commission may forward a copy of the information received to the affiliated licensee's designated broker. The commission shall have the power to hold an investigatory hearing to determine whether there is a probability of a violation of sections 339.010 to 339.180 and sections 339.710 to 339.860. The commission shall have the power to issue a subpoena to

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.

compel the production of records and papers bearing on the complaint. The commission shall have the power to issue a subpoena and to compel any person in this state to come before the commission to offer testimony or any material specified in the subpoena. Subpoenas and subpoenas duces tecum issued pursuant to this section shall be served in the same manner as subpoenas in a criminal case. The fees and mileage of witnesses shall be the same as that allowed in the circuit court in civil cases.

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(5) Failure to timely deliver a duplicate original of any and all instruments to any party or parties executing the same where the instruments have been prepared by the licensee or under his or her supervision or are within his or her control, including, but not limited to, the instruments relating to the employment of the licensee or to any matter pertaining to the consummation of a lease, listing agreement or the purchase, sale, exchange or lease of property, or any type of real estate transaction in which he or she may participate as a licensee;

(6) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts, or accepting a commission or valuable consideration for services from more than one party in a real estate transaction without the knowledge of all parties to the transaction;

(7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860;

(8) Guaranteeing or having authorized or permitted any licensee to guarantee future profits which may result from the resale of real property;

(9) Having been finally adjudicated and been found guilty of the violation of any state or federal statute which governs the sale or rental of real property or the conduct of the real estate business as defined in subsection 1 of section 339.010;

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

(11) Representing a real estate broker other than the broker with whom associated without the express written consent of the broker with whom associated;

(12) Accepting a commission or valuable consideration for the performance of any of the acts referred to in section 339.010 from any person except the broker with whom associated at the time the commission or valuable consideration was earned;

(13) Using prizes, money, gifts or other valuable consideration as inducement to secure customers or clients to purchase, lease, sell or list property when the awarding of such prizes, money, gifts or other valuable consideration is conditioned upon the purchase, lease, sale or listing; or soliciting, selling or offering for sale real property by offering free lots, or conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Placing a sign on or advertising any property offering it for sale or rent without the written consent of the owner or his or her duly authorized agent;

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(17) Failure to timely inform seller of all written offers unless otherwise instructed in writing by the seller;

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

(20) Disciplinary action against the holder of a license or other right to practice any profession regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 granted by another state, territory, federal agency, or country upon grounds for which revocation, suspension, or probation is authorized in this state;

(21) Been found by a court of competent jurisdiction of having used any controlled substance, as defined in chapter 195, RSMo, to the extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 339.010 to 339.180 and sections 339.710 to 339.860;

(22) Been finally adjudged insane or incompetent by a court of competent jurisdiction;

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860;

(24) Use of any advertisement or solicitation which is knowingly false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed**;**

(25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section material means important information about which the commission should be informed and which may influence a licensing decision;

(26) Engaging in, committing, or assisting any person in engaging in or committing any practice or act of mortgage fraud, as described in section 443.930, RSMo.

3. After the filing of such complaint, the proceedings will be conducted in accordance with the provisions of law relating to the administrative hearing commission. A finding of the administrative hearing commissioner that the licensee has performed or attempted to perform one or more of the foregoing acts shall be grounds for the suspension or revocation of his license by the commission, or the placing of the licensee on probation on such terms and conditions as the real estate commission shall deem appropriate, or the imposition of a civil penalty by the commission not to exceed two thousand five hundred dollars for each offense. Each day of a continued violation shall constitute a separate offense.

4. The commission may prepare a digest of the decisions of the administrative hearing commission which concern complaints against licensed brokers or salespersons and cause such digests to be mailed to all licensees periodically. Such digests may also contain reports as to new or changed rules adopted by the commission and other information of significance to licensees.

5. Notwithstanding other provisions of this section, a broker or salesperson's license shall be revoked, or in the case of an applicant, shall not be issued, if the licensee or applicant has

pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of any of the following offenses or offenses of a similar nature established under the laws of this, any other state, the United States, or any other country, notwithstanding whether sentence is imposed:

(1) Any dangerous felony as defined under section 556.061, RSMo, or murder in the first degree;

(2) Any of the following sexual offenses: rape, statutory rape in the first degree, statutory rape in the second degree, sexual assault, forcible sodomy, statutory sodomy in the first degree, statutory sodomy in the second degree, child molestation in the first degree, child molestation in the second degree, deviate sexual assault, sexual misconduct involving a child, sexual misconduct in the first degree, sexual abuse, enticement of a child, or attempting to entice a child;

(3) Any of the following offenses against the family and related offenses: incest, abandonment of a child in the first degree, abandonment of a child in the second degree, endangering the welfare of a child in the first degree, abuse of a child, using a child in a sexual performance, promoting sexual performance by a child, or trafficking in children; **[**and**]**

(4) Any of the following offenses involving child pornography and related offenses: promoting obscenity in the first degree, promoting obscenity in the second degree when the penalty is enhanced to a class D felony, promoting child pornography in the first degree, promoting child pornography in the second degree, possession of child pornography in the first degree, possession of child pornography in the second degree, furnishing child pornography to a minor, furnishing pornographic materials to minors, or coercing acceptance of obscene material**; and**

(5) Mortgage fraud as defined in section 570.310, RSMo.

6. A person whose license was revoked under subsection 5 of this section may appeal such revocation to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of revocation. Failure of a person whose license was revoked to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the revocation. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing **[**commission**] commissioner**.

339.175. 1. If the commission believes that a real estate broker or real estate salesperson has engaged in, is engaging in, or has willfully taken a substantial step toward engaging in an act, practice, omission, or course of business constituting mortgage fraud, as defined in section 443.930, RSMo, or that a person has materially aided or is materially aiding any such act, practice, omission, or course of business, the commission may maintain an action in the circuit court of any county of the state or any city not within a county to

enjoin the person. Upon a proper showing, the court may issue a permanent or temporary injunction, restraining order, or declaratory judgment.

2. The court may impose a civil penalty against the person of two thousand five hundred dollars for each violation and may grant any other relief the court determines is just and proper under the circumstances, including, but not limited to, a temporary suspension of any license issued by the commission.

3. The commission may initiate an investigation and take all measures necessary to find the facts of any potential violation of this section, including issuing subpoenas to compel the attendance and testimony of witnesses and the production of documents and other evidence. The commission may conduct joint investigations, enter into confidentiality agreements, and share information obtained under an investigation under this section with other governmental agencies.

4. The enforcement authority of the commission under this section is cumulative to any other statutory authority of the commission.

339.532. 1. The commission may refuse to issue or renew any certificate or license issued pursuant to sections 339.500 to 339.549 for one or any combination of causes stated in subsection 2 of this section. The commission shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

(1) Procuring or attempting to procure a certificate or license pursuant to section 339.513 by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification or licensure, or through any form of fraud or misrepresentation;

(2) Failing to meet the minimum qualifications for certification or licensure or renewal established by sections 339.500 to 339.549;

(3) Paying money or other valuable consideration, other than as provided for by section 339.513, to any member or employee of the commission to procure a certificate or license pursuant to sections 339.500 to 339.549;

(4) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 339.500 to 339.549 for any offense of which an essential

element is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

(11) Accepting an appraisal assignment when the employment itself is contingent upon the appraiser's reporting a predetermined analysis or opinion or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment;

(12) Violating the confidential nature of governmental records to which the person gained access through employment or engagement to perform an appraisal assignment or specialized appraisal services for a governmental agency;

(13) Violating any term or condition of a certificate or license issued by the commission pursuant to the authority of sections 339.500 to 339.549;

(14) Violation of any professional trust or confidence;

(15) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(16) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by sections 339.500 to 339.549 who is not licensed or certified and currently eligible to practice pursuant to sections 339.500 to 339.549;

(17) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(18) Disciplinary action against the holder of a license, certificate or other right to practice any profession regulated pursuant to sections 339.500 to 339.549, imposed by another

state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state**;**

(19) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure certification or for license or certification renewal. As used in this subsection material means important information about which the commission should be informed and which may influence a licensing decision;

(20) Engaging in, committing, or assisting any person in engaging in or committing any practice or act of mortgage fraud, as described in section 443.930, RSMo.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the commission may, singly or in combination, publicly censure or place the person named in the complaint on probation on such terms and conditions as the commission deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke, the certificate or license. The holder of a certificate or license revoked pursuant to this section may not obtain certification as a state-certified real estate appraiser or licensure as a state-licensed real estate appraiser for at least five years after the date of revocation.

4. **Notwithstanding other provisions of this section, a real estate appraiser license or certification shall be revoked, or in the case of an applicant, shall not be issued, if the licensee or applicant has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of mortgage fraud as defined in section 570.310, RSMo. The commission shall notify the individual for the reasons for the revocation in writing, by certified mail.**

5. A person whose license was revoked under subsection 4 of this section may appeal such revocation to the administrative hearing commission. Notice of such appeal shall be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of revocation. Failure of a person whose license was revoked to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the revocation. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commissioner.

6. A certification of a state-certified real estate appraiser or a license of a state-licensed real estate appraiser that has been suspended as a result of disciplinary action by the commission shall not be reinstated, and a person may not obtain certification as a state-certified real estate appraiser or licensure as a state-licensed real estate appraiser subsequent to revocation, unless the applicant presents evidence of completion of the continuing education required by section 339.530 during the period of suspension or revocation as well as fulfillment of any other conditions imposed by the commission. Applicants for recertification, relicensure or

reinstatement also shall be required to successfully complete the examination for original certification or licensure required by section 339.515 as a condition to reinstatement of certification or licensure, or recertification or relicensure subsequent to revocation.

339.543. 1. If the commission believes that an appraiser has engaged in, is engaging in, or has willfully taken a substantial step toward engaging in an act, practice, omission, or course of business constituting mortgage fraud, as defined in section 443.930, RSMo, or that a person has materially aided or is materially aiding any such act, practice, omission, or course of business, the commission may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the person. Upon a proper showing, the court may issue a permanent or temporary injunction, restraining order, or declaratory judgment.

2. The court may impose a civil penalty against the person of two thousand five hundred dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances, including, but not limited to, a temporary suspension of any license issued by the commission.

3. The commission may initiate an investigation and take all measures necessary to find the facts of any potential violation of this section, including issuing subpoenas to compel the attendance and testimony of witnesses and the production of documents and other evidence. The commission may conduct joint investigations, enter into confidentiality agreements, and share information obtained under an investigation under this section with other governmental agencies.

4. The enforcement authority of the commission under this section is cumulative to any other statutory authority of the commission.

443.809. **[**When the director has reasonable cause to believe that any person has not submitted an application for licensure and is conducting any of the activities described in subsection 1 of section 443.805, the director may examine all books and records of the person and any additional documentation necessary to determine whether such person is required to be licensed pursuant to sections 443.800 to 443.893.**] The director shall have the authority, at any time and as often as reasonably necessary, to investigate or examine the books and records of any licensed person to assure compliance with sections 443.800 to 443.893. The director shall have the right to examine under oath all persons whose testimony may be required relative to the business of any person being examined or investigated under sections 443.800 to 443.893. The director shall have free and immediate access to any licensed person's places of business and to all books and records related to the licensed business.**

443.810. Effective May 21, 1998, any person who violates any provision of sections 443.805 to 443.812 shall be deemed guilty of a class C felony. **In addition, in any contested case proceeding, the director or board may assess a civil penalty of up to five thousand dollars per violation for any violation of any of the provisions of sections 443.800 to 443.893.**

443.891. **1.** Upon making any one or more of the following **preliminary** findings, the director may issue a notice of **[**intent to issue an order**] charges in support** of **[**removal or prohibition, or**]** an order of removal and prohibition, which order may remove **and prohibit** a named person**[**, persons**]** or entity **[**or entities**]** from participating in **loan brokering, mortgage brokering or mortgage brokerage service for any loan secured by real estate whether in the affairs of an exempt entity or in** the affairs of one or more licensees **[**and may be permanent or for a specific shorter period of time**] under sections 443.800 to 443.893, or in the affairs of any financial institution under the jurisdiction of the director. An order of removal or of prohibition may be permanent or for a specific term and may impose additional conditions including requiring restitution and imposition of a civil penalty not exceeding five thousand dollars per occurrence**. The findings required by this section may be any one or more of the following:

(1) A finding that the **[**part**] person** or entity subject to the order has been convicted of a crime involving material financial loss to a licensee, a federally insured depository institution, a government-sponsored enterprise, a Federal Home Loan Bank, a Federal Reserve Bank or any other person;

(2) A finding that the person or entity subject to the order has **[**submitted, or caused to be submitted, any document that contains multiple willful and material misstatements of facts and includes the signature of the person or entity specified in the director's order or that is notarized, certified, verified or is in any other way attested to as to the document's veracity. An application for licensure or license renewal may be considered such a document.**] , in connection with any license application or renewal, or in connection with the application for or procurement of a loan secured by real estate, made any material misstatement, misrepresentation, or omission. As used in this section material means important information about which the commission should be informed and which may influence a licensing or lending decision;**

(3) A finding that the person subject to the order has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of mortgage fraud as defined in section 570.310, RSMo.

2. If a hearing is requested, the director or his or her designee shall conduct a hearing under chapter 536, RSMo.

3. If the respondent defaults, consents to an order of removal and prohibition, or if upon the record the director finds the grounds specified supporting a removal and prohibition are established, the director may issue such an order including conditions for restitution or for a civil penalty not to exceed five thousand dollars per occurrence to be effective thirty days after service and to remain in effect and enforceable except to the extent it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

443.930. 1. It is unlawful for a person, in connection with the application for or procurement of a loan secured by real estate to:

(1) Employ a device, scheme, or artifice to defraud;

(2) Make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading; or

(3) Receive any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with a real estate closing that such person knew involved a violation of this section;

(4) Influence, through extortion or bribery, the development, reporting, result or review of a real estate appraisal, except that this subsection does not prohibit a mortgage lender, mortgage broker, mortgage banker, real estate licensee or other person from asking the appraiser to do one or more of the following:

(a) Consider additional property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice.

2. Such acts shall be deemed to constitute mortgage fraud.

570.310. 1. It is unlawful for a person, in connection with the application for or procurement of a loan secured by real estate, to willfully:

(1) Employ a device, scheme, or artifice to defraud;

(2) Make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading; or

(3) Receive any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with a real estate closing that such person knew involved a violation of this section;

(4) Influence, through extortion or bribery, the development, reporting, result or review of a real estate appraisal, except that this subsection does not prohibit a mortgage lender, mortgage broker, mortgage banker, real estate licensee or other person from asking the appraiser to do one or more of the following:

(a) Consider additional property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice.

2. Such acts shall be deemed to constitute mortgage fraud.

3. Mortgage fraud is a class C felony.

4. Each transaction in violation of this section shall constitute a separate offense.

5. Jurisdiction over any dispute relating to mortgage fraud or a conspiracy or endeavor to engage in or participate in a pattern of mortgage fraud shall be:

(1) In the county in which the real estate is located;

(2) In the county in which any act was performed in furtherance of mortgage fraud;

(3) In any county in which any person alleged to have violated this section had control or possession of any proceeds from mortgage fraud;

(4) In any county in which a related real estate closing occurred; or

(5) In any county in which any document related to a mortgage fraud is filed with the recorder of deeds.

6. Prosecution under the provisions of this section shall not preclude:

(1) The power of this state to punish a person for conduct that constitutes a crime under other laws of this state;

(2) A civil suit by any person;

(3) Administrative or disciplinary action by the state or the United States or by any agency of the state or the United States;

(4) A civil forfeiture action; or

(5) An action under chapter 407, RSMo.

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