

HCS HB 382 -- MORTGAGE BROKERS

SPONSOR: Cunningham (Cox)

COMMITTEE ACTION: Voted "do pass" by the Committee on Financial Institutions by a vote of 11 to 0.

This substitute repeals the Residential Mortgage Brokers License Act and establishes in its place the Missouri Secure and Fair Enforcement for Mortgage Licensing and Residential Mortgage Brokers Licensing Act. It its main provisions, the substitute:

(1) Requires an individual engaging in the business of a mortgage loan originator to be licensed, employed, and acting under the supervision of a single, Missouri-licensed residential mortgage broker, except certain specified individuals. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (NMLSR). The unique identifier must be clearly shown on all residential mortgage loan applications, forms, solicitations, or advertisements, including business cards, web sites, and any other documents as required by the Director of the Division of Finance within the Department of Insurance, Financial Institutions and Professional Registration (Section 443.706, RSMo);

(2) Requires an independent contractor who is engaged in the activities of a loan processor or underwriter for a Missouri residential real estate loan to be licensed and maintain a valid unique identifier issued by the NMLSR. The independent contractor must certify annually under oath to the division director that he or she will not engage in the activities of a mortgage loan originator absent full compliance with the provisions regarding mortgage loan originators (Section 443.707);

(3) Allows the division director to establish licensing rules or regulations and interim procedures for the licensing and acceptance of applications and to establish expedited review and licensing procedures for individuals previously licensed as or who were previously an ultimate equitable owner of a residential mortgage loan broker (Section 443.709);

(4) Authorizes the division director to establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to collect and maintain records and process fees related to licensees or other persons subject to the act. An applicant for licensing as a mortgage loan originator must provide, at a minimum, the following information concerning his or her identity to the NMLSR:

(a) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency for a state, national, and international criminal history background check; and

(b) Personal history and experience including an independent credit report and information related to any administrative, civil, or criminal findings by any governmental jurisdiction provided; however, no applicant can be denied a license solely on the basis of a credit score (Section 443.711);

(5) Prohibits the division director from issuing or renewing a mortgage loan originator license until he or she makes, at a minimum, the following findings that the applicant:

(a) Has never had a mortgage loan originator license revoked;

(b) Has not been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court in the preceding seven-year period or at any time if the felony involved fraud, dishonesty, a breach of trust, or money laundering;

(c) Has demonstrated financial responsibility, character, and general fitness to command confidence of the community;

(d) Has completed the prelicensing education requirements;

(e) Has passed a written test meeting the requirements of the act; and

(f) Has met the Missouri surety bond requirements of the act or the requirements have been met by the applicant's employer (Section 443.713);

(6) Requires the division director to establish a process whereby mortgage loan originators can challenge information entered into the NMLSR by the division director (Section 443.727);

(7) Allows the division director to deny, suspend, revoke, condition, or decline to renew a licence for violations against the act or for withholding information or making material misstatements in a license or renewal application. The division director can order restitution and impose fines on any person violating the provisions of the act (Section 443.729);

(8) Authorizes the division director to conduct investigations and examinations regarding compliance with the provisions of the act (Section 443.735);

(9) Prohibits any person or individual subject to the act from:

- (a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (b) Engaging in any unfair or deceptive practice toward any person;
- (c) Obtaining property by fraud or misrepresentation;
- (d) Soliciting or entering into a contract with a borrower that allows the person or individual to earn a fee or commission when no loan is actually obtained by the borrower;
- (e) Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (f) Conducting business or assisting, aiding, or abetting any person in conducting business without holding a valid license or having the required employment;
- (g) Requiring a borrower to obtain property insurance coverage that exceeds the replacement cost of improvements; and
- (h) Failing to truthfully account for moneys belonging to a party to a residential mortgage loan transaction (Section 443.737); and
- (10) Requires mortgage loan brokers to disclose all fees and compensation with the borrower (Section 443.867).

The provisions regarding an individual engaging in the business of a mortgage loan originator without first obtaining and maintaining a license under the provisions of the substitute and obtaining employment and acting under the supervision of a single licensed residential mortgage broker become effective July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development.

The substitute contains an emergency clause.

FISCAL NOTE: No impact on General Revenue Fund in FY 2010, FY 2011, and FY 2012. Estimated Effect on Other State Funds of a cost of \$28,885 in FY 2010, an income of \$37,197 in FY 2011, and an income of \$27,517 in FY 2012.

PROPOSERS: Supporters say that the bill will allow easier access to licensing across states for mortgage brokers. If this is not put into place, the federal government will begin

regulating this industry. The state is better equipped to handle regulation of this industry.

Testifying for the bill were Representative Cox; Division of Finance, Department of Insurance, Financial Institutions and Professional Regulation; Missouri Bankers Association; Mortgage Bankers Association of Missouri; Missouri Financial Services Association; State Farm Insurance Companies; Missouri Association of Mortgage Brokers; St. Louis County Municipal League; Missouri Credit Union Association; and Debbie Irwin, Beyond Housing and Metro St. Louis Foreclosure Prevention Task Force.

OPPONENTS: There was no opposition voiced to the committee.