

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2188
94TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, April 24, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4918S.05C

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Section A. Sections 339.100, 339.532, 443.809, 443.810, and 443.891, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 339.100, 339.175, 339.532, 339.543, 443.809, 443.810, 443.891, 443.930, and 570.310, to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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 subpoena. Subpoenas and subpoenas duces tecum issued pursuant to this section
16 shall be served in the same manner as subpoenas in a criminal case. The fees
17 and mileage of witnesses shall be the same as that allowed in the circuit court in
18 civil cases.

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

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

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

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

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

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

49 (6) Acting for more than one party in a transaction without the knowledge
50 of all parties for whom he or she acts, or accepting a commission or valuable

51 consideration for services from more than one party in a real estate transaction
52 without the knowledge of all parties to the transaction;

53 (7) Paying a commission or valuable consideration to any person for acts
54 or services performed in violation of sections 339.010 to 339.180 and sections
55 339.710 to 339.860;

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

58 (9) Having been finally adjudicated and been found guilty of the violation
59 of any state or federal statute which governs the sale or rental of real property
60 or the conduct of the real estate business as defined in subsection 1 of section
61 339.010;

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

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

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

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

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

81 (15) Violation of, or attempting to violate, directly or indirectly, or
82 assisting or enabling any person to violate, any provision of sections 339.010 to
83 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant
84 to sections 339.010 to 339.180 and sections 339.710 to 339.860;

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

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

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

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

99 (20) Disciplinary action against the holder of a license or other right to
100 practice any profession regulated under sections 339.010 to 339.180 and sections
101 339.710 to 339.860 granted by another state, territory, federal agency, or country
102 upon grounds for which revocation, suspension, or probation is authorized in this
103 state;

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

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

110 (23) Assisting or enabling any person to practice or offer to practice any
111 profession licensed or regulated under sections 339.010 to 339.180 and sections
112 339.710 to 339.860 who is not registered and currently eligible to practice under
113 sections 339.010 to 339.180 and sections 339.710 to 339.860;

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

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

122 **(26) Engaging in, committing, or assisting any person in**

123 **engaging in or committing mortgage fraud, as defined in section**
124 **443.930, RSMo.**

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

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

140 5. Notwithstanding other provisions of this section, a broker or
141 salesperson's license shall be revoked, or in the case of an applicant, shall not be
142 issued, if the licensee or applicant has pleaded guilty to, entered a plea of nolo
143 contendere to, or been found guilty of any of the following offenses or offenses of
144 a similar nature established under the laws of this, any other state, the United
145 States, or any other country, notwithstanding whether sentence is imposed:

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

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

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

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

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

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

**339.175. 1. If the commission believes that a real estate broker
2 or real estate sales person has engaged in, is engaging in, or has
3 willfully taken a substantial step toward engaging in an act, practice,
4 omission, or course of business constituting mortgage fraud, as defined
5 in section 443.930, RSMo, or that a person has materially aided or is
6 materially aiding any such act, practice, omission, course of business,
7 the commission may maintain an action in the circuit court of any
8 county of the state or any city not within a county to enjoin the
9 person. Upon a proper showing, the court may issue a permanent or
10 temporary injunction, restraining order, or declaratory judgment.**

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

16 **3. The commission may initiate an investigation and take all
17 measures necessary to find the facts of any potential violation of this
18 section, including issuing subpoenas to compel the attendance and
19 testimony of witnesses and the production of documents and other**

20 **evidence. The commission may conduct joint investigations, enter into**
21 **confidentiality agreements and share information obtained relating to**
22 **an investigation under this section with other governmental agencies.**

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

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

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

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

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

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

22 (4) The person has been finally adjudicated and found guilty, or entered
23 a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
24 any state or the United States, for any offense reasonably related to the
25 qualifications, functions or duties of any profession licensed or regulated
26 pursuant to sections 339.500 to 339.549 for any offense of which an essential
27 element is fraud, dishonesty or an act of violence, or for any offense involving
28 moral turpitude, whether or not sentence is imposed;

29 (5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or
30 misrepresentation in the performance of the functions or duties of any profession

31 licensed or regulated by sections 339.500 to 339.549;

32 (6) Violation of any of the standards for the development or
33 communication of real estate appraisals as provided in or pursuant to sections
34 339.500 to 339.549;

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

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

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

43 (10) Violating, assisting or enabling any person to willfully disregard any
44 of the provisions of sections 339.500 to 339.549 or the regulations of the
45 commission for the administration and enforcement of the provisions of sections
46 339.500 to 339.549;

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

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

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

57 (14) Violation of any professional trust or confidence;

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

60 (16) Assisting or enabling any person to practice or offer to practice any
61 profession licensed or regulated by sections 339.500 to 339.549 who is not licensed
62 or certified and currently eligible to practice pursuant to sections 339.500 to
63 339.549;

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

67 (18) Disciplinary action against the holder of a license, certificate or other
68 right to practice any profession regulated pursuant to sections 339.500 to 339.549,
69 imposed by another state, territory, federal agency or country upon grounds for
70 which revocation or suspension is authorized in this state;

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

76 **(20) Engaging in or committing, or assisting any person in**
77 **engaging in or committing, any practice or act of mortgage fraud, as**
78 **defined in section 443.930, RSMo.**

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

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

97 5. **A person whose license is revoked under subsection 4 of this**
98 **section may appeal such revocation to the administrative hearing**
99 **commission, as provided by chapter 621, within ninety days from the**
100 **time the commission mails the notice of revocation. A person who fails**
101 **to do so waives all rights to appeal the revocation.**

102 6. A certification of a state-certified real estate appraiser or a license of

103 a state-licensed real estate appraiser that has been suspended as a result of
104 disciplinary action by the commission shall not be reinstated, and a person may
105 not obtain certification as a state-certified real estate appraiser or licensure as
106 a state-licensed real estate appraiser subsequent to revocation, unless the
107 applicant presents evidence of completion of the continuing education required
108 by section 339.530 during the period of suspension or revocation as well as
109 fulfillment of any other conditions imposed by the commission. Applicants for
110 recertification, relicensure or reinstatement also shall be required to successfully
111 complete the examination for original certification or licensure required by section
112 339.515 as a condition to reinstatement of certification or licensure, or
113 recertification or relicensure subsequent to revocation.

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

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

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

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

443.809. [When the director has reasonable cause to believe that any

2 person has not submitted an application for licensure and is conducting any of the
3 activities described in subsection 1 of section 443.805, the director may examine
4 all books and records of the person and any additional documentation necessary
5 to determine whether such person is required to be licensed pursuant to sections
6 443.800 to 443.893.] **The director shall have the authority, at any time
7 and as often as reasonably necessary, to investigate or examine the
8 books and records of any licensed person to assure compliance with
9 sections 443.800 to 443.893. The director shall have the right to
10 examine under oath, all persons whose testimony may be required
11 relative to the business of any person being examined or investigated
12 under sections 443.800 to 443.893. The director shall have free and
13 immediate access to any licensed person's places of business and to all
14 books and records related to the licensed business.**

443.810. Effective May 21, 1998, any person who violates any provision
2 of sections 443.805 to 443.812 shall be deemed guilty of a class C felony. **In
3 addition, in any contested case proceeding, the director or board may
4 assess a civil penalty of up to five thousand dollars per violation for
5 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**
2 findings, the director may issue a notice of [intent to issue an order] **charges in
3 support** of [removal or prohibition, or] an order of removal and prohibition,
4 which order may remove **and prohibit** a named person[, persons] or entity [or
5 entities] from participating in **loan brokering, mortgage brokering or
6 mortgage brokerage service for any loan secured by real estate whether
7 in the affairs of an exempt entity or in the affairs of one or more licensees
8 [and may be permanent or for a specific shorter period of time] under sections
9 443.800 to 443.893, or in the affairs of any financial institution under
10 the jurisdiction of the director. An order of removal or of prohibition
11 may be permanent or for a specific term and may impose additional
12 conditions including requiring restitution and imposition of a civil
13 penalty not exceeding five thousand dollars per occurrence.** The findings
14 required by this section may be any one or more of the following:

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

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

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

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

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

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

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

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

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

11 (4) Influence, through extortion or bribery, the development,
12 reporting, result, or review of a real estate appraisal, except that this
13 subsection does not prohibit a mortgage lender, mortgage broker,

14 mortgage banker, real estate licensee, or other person from asking the
15 appraiser to do one or more of the following:

16 (a) Consider additional property information;

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

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

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

22 3. This section shall not be construed to create a private right of
23 action.

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

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

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

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

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

17 (a) Consider additional property information;

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

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

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

23 3. Mortgage fraud is a class C felony.

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

26 5. Venue over any dispute relating to mortgage fraud or a
27 conspiracy or endeavor to engage in or participate in a pattern of

28 mortgage fraud shall be:

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

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

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

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

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

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

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

43 (2) A civil action by any person;

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

46 (4) A civil forfeiture action; or

47 (5) An action under chapter 407, RSMo.

✓