

SECOND REGULAR SESSION

HOUSE BILL NO. 1309

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WELLS (Sponsor), CRAWFORD, BERRY, DAY, NANCE,
KELLEY (126) AND ENTLICHER (Co-sponsors).

5176H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 408.052 and 443.812, RSMo, and to enact in lieu thereof two new sections relating to residential mortgage loan brokers.

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

Section A. Sections 408.052 and 443.812, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 408.052 and 443.812, to read as follows:

408.052. 1. No lender shall charge, require or receive, on any residential real estate loan,
2 any points or other fees of any nature whatsoever, excepting insurance, including insurance for
3 involuntary unemployment coverage, and a one-percent origination fee, whether from the buyer
4 or the seller or any other person, except that the lender may charge bona fide expenses paid by
5 the lender to any other person or entity except to an officer, employee, or director of the lender
6 or to any business in which any officer, employee or director of the lender owns any substantial
7 interest for services actually performed in connection with a loan. In addition to the foregoing,
8 if the loan is for the construction, repair, or improvement of residential real estate, the lender may
9 charge a fee not to exceed one percent of the loan amount for inspection and disbursement of the
10 proceeds of the loan to third parties. Notwithstanding the foregoing, the parties may contract for
11 a default charge for any installment not paid in full within fifteen days of its scheduled due date.
12 The restrictions of this section shall not apply:

13 (1) To any loan which is insured or covered by guarantee made by any department,
14 board, bureau, commission, agency or establishment of the United States, pursuant to the
15 authority of any act of Congress heretofore or hereafter adopted; and

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.

16 (2) To any loan for which an offer or commitment or agreement to purchase has been
17 received from and which is made with the intention of reselling such loan to the Federal Housing
18 Administration, Farmers Home Administration, Federal National Mortgage Association,
19 Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or to
20 any successor to the above-mentioned organizations, to any other state or federal governmental
21 or quasi-governmental organization; [and]

22 (3) **To any mortgage broker making loans on manufactured or modular homes; and**

23 (4) Provided that the 1994 reenactment of this section shall not be construed to be action
24 taken in accordance with Public Law 96-221, Section 501(b)(4). Any points or fees received in
25 excess of those permitted under this section shall be returned to the person from whom received
26 upon demand.

27 2. Notwithstanding the language in subsection 1 of this section, a lender may pay to an
28 officer, employee or director of the lender, or to any business in which such person has an
29 interest, bona fide fees for services actually and necessarily performed in good faith in
30 connection with a residential real estate loan, provided:

31 (1) Such services are individually listed by amount and payee on the loan-closing
32 documents; and

33 (2) Such lender may use the preemption of Public Law 96-221, Section 501 with respect
34 to the residential real estate loan in question. When fees charged need not be disclosed in the
35 annual percentage rate required by Title 15, U.S.C. Sections 1601, et seq., and regulations
36 thereunder because such fees are de minimis amounts or for other reasons, such fees need not
37 be included in the annual percentage rate for state examination purposes.

38 3. The lender may charge and collect bona fide fees for services actually and necessarily
39 performed in good faith in connection with a residential real estate loan as provided in subsection
40 2 of this section; however, the lender's board of directors shall determine whether such bona fide
41 fees shall be paid to the lender or businesses related to the lender in subsection 2 of this section,
42 but may allow current contractual relationships to continue for up to two years.

43 4. If any points or fees are charged, required or received, which are in excess of those
44 permitted by this section, or which are not returned upon demand when required by this section,
45 then the person paying the same points or fees or his or her legal representative may recover
46 twice the amount paid together with costs of the suit and reasonable attorney's fees, provided that
47 the action is brought within five years of such payment.

48 5. Any lender who knowingly violates the provisions of this section is guilty of a class
49 B misdemeanor.

443.812. 1. Only one license shall be issued to each person conducting the activities of
2 a residential mortgage **loan** broker. A residential mortgage broker shall register with the director

each office, place of business or location in Missouri where the residential mortgage loan broker conducts any part of the residential mortgage loan broker's business pursuant to section 443.839.

2. Residential mortgage loan brokers may only solicit, broker, fund, originate, serve and purchase residential mortgage loans in conformance with sections 443.701 to 443.893 and such rules as may be promulgated by the director.

3. No residential mortgage loan broker shall permit an unlicensed individual to engage in the activities of a mortgage loan originator and no residential mortgage loan broker shall permit a mortgage loan originator to engage in the activities of a mortgage loan originator under the supervision of the residential mortgage loan broker until that mortgage loan originator is shown to be employed by the residential mortgage loan broker as provided in this section.

4. Each residential mortgage loan broker shall report and file a listing with the director showing each mortgage loan originator licensed in Missouri and employed under the supervision of the residential mortgage loan broker. The listing shall show the name and unique identifier of each mortgage loan originator. The listing shall be updated with changes and filed no later than the next business day. The director may authorize a system of reporting that shows mortgage loan originators employed by Missouri residential mortgage loan brokers via the NMLSR in substitution for the report and filing requirement under this subsection.

5. The director may grant waivers of residential mortgage loan broker licensing requirements for persons engaged primarily in servicing residential mortgage loans where such waiver shall benefit borrowers including in particular the requirement to maintain a full-service office in Missouri.

6. (1) The provisions of this subsection shall only apply to any mortgage loan broker making loans on manufactured or modular homes.

(2) No residential mortgage loan broker licensed in this state shall be required to maintain a full-service office in Missouri; except that, nothing in this subsection shall be construed as relieving such broker of the requirements to be licensed in this state and obtain a certificate of authority from the secretary of state's office to transact business in this state.

(3) Any residential mortgage loan broker licensed in this state who does not maintain a full-service office in Missouri shall file with the license application an irrevocable consent in a form to be determined by the director, duly acknowledged, which provides that for any suits and actions commenced against the broker in the courts of this state and, if necessary for any actions brought against the broker, the venue shall lie in Missouri.

(4) The director may assess the reasonable costs of any investigation incurred by the division which are outside the normal expense of any annual or special examination or

39 **any other costs incurred by the division as a result of a licensed residential mortgage loan**
40 **broker not maintaining a full-service office in Missouri.**

✓