

SECOND REGULAR SESSION

SENATE BILL NO. 1059

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time January 31, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4655S.011

AN ACT

To repeal sections 339.100, 339.532, 339.549, 443.809, 443.810, 443.891, and 621.045, RSMo, and to enact in lieu thereof twelve 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Section A. Sections 339.100, 339.532, 339.549, 443.809, 443.810, 443.891, 2 and 621.045, RSMo, are repealed and twelve new sections enacted in lieu thereof, 3 to be known as sections 339.100, 339.175, 339.532, 339.542, 339.543, 339.549, 4 443.809, 443.810, 443.891, 443.930, 570.310, and 621.045, to read as follows:

339.100. 1. The commission may, upon its own motion, and shall upon 2 receipt of a written complaint filed by any person, investigate any real 3 estate-related activity of a licensee licensed under sections 339.010 to 339.180 4 and sections 339.710 to 339.860 or an individual or entity acting as or 5 representing themselves as a real estate licensee. In conducting such 6 investigation, if the questioned activity or written complaint involves an affiliated 7 licensee, the commission may forward a copy of the information received to the 8 affiliated licensee's designated broker. The commission shall have the power to 9 hold an investigatory hearing to determine whether there is a probability of a 10 violation of sections 339.010 to 339.180 and sections 339.710 to 339.860. The 11 commission shall have the power to issue a subpoena to compel the production of 12 records and papers bearing on the complaint. The commission shall have the 13 power to issue a subpoena and to compel any person in this state to come before 14 the commission to offer testimony or any material specified in the 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

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

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 person has engaged
2 in, is engaging in, or has willfully taken a substantial step toward
3 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, course of business, the commission may maintain an
7 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 of two
12 thousand five hundred dollars for each violation and may grant any
13 other relief the court determines is just and proper under the
14 circumstances.**

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

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

**339.542. 1. If the commission believes that a person has engaged
2 in, is engaging in, or has taken a substantial step toward engaging in
3 an act, practice, omission, or course of business constituting a violation
4 of the sections 339.500 to 339.549, or section 443.930, RSMo, or that a
5 person has materially aided or is materially aiding any such act,
6 practice, omission, course of business, the commission may request that
7 the director issue an order directing the person to cease and desist
8 from engaging in the act, practice, omission, violation, or course of
9 business; take other action necessary or appropriate to comply with
10 sections 339.500 to 339.549, or section 443.930, RSMo; and require
11 payment of the costs of the investigation, examination, or audit.**

12 **2. The commission may request a cease and desist order from the
13 director under subsection 1 of this section by filing such request with
14 the director. Such request shall identify the relief sought by the
15 commission and shall contain a statement of reasons for the relief
16 requested identifying the factual basis for the request.**

17 **3. After receipt of a request for a cease and desist order, the
18 director shall schedule a date, time, and place for a hearing which shall
19 not be less than ten days from the filing of the request, unless
20 otherwise agreed upon by the parties.**

21 **4. The director shall provide notice to any person against whom
22 relief is sought by serving, either personally or by certified mail, a copy
23 of the cease and desist request under subsection 2 of this section, an
24 order directing the individual to show cause why a cease and desist
25 order should not be issued, and a statement of whether the commission
26 is requesting costs of the investigation, examination, or audit. The
27 notice shall include the date, time, and place of the hearing scheduled
28 by the director under subsection 3 of this section.**

29 **5. Any hearing under subsection 3 of this section shall be held**

30 before the director or the director may refer the proceeding to the
31 administrative hearing commission for a hearing. Upon such referral,
32 the administrative hearing commission shall make findings of fact,
33 conclusions of law, and recommend an order. Such hearing or any
34 order issued by the director shall be respectively deemed an open
35 meeting or open record. A final order may not be issued unless the
36 director makes findings of fact and conclusions of law in accordance
37 with the provisions of chapter 536, RSMo, and the procedural rules
38 promulgated by the commission.

39 6. If cease and desist is ordered in a final order under subsection
40 5 of this section, the director may charge the actual cost of the
41 investigation or audit to the party against whom administrative
42 enforcement is sought.

43 7. The director, or the administrative hearing commission in
44 referred hearings, is authorized to issue subpoenas, compel attendance
45 of witnesses, administer oaths, hear testimony of witnesses, receive
46 evidence, and require the production of books, papers, records,
47 correspondence, and all other written instruments or documents
48 relevant to the proceedings authorized by this section and authorized
49 in contested cases under the provisions of chapter 536, RSMo, and
50 procedural rules promulgated by the director.

51 8. Statements of charges of the commission and notices, orders,
52 and other processes of the director shall be served by anyone duly
53 appointed by the director either in the manner provided by law for
54 service of process in civil actions and by mailing a copy to the person
55 affected by such statement, notice, order, at his or her residence,
56 principal office, or place of business, by certified or regular mail. The
57 verified return by the person so serving such statement, notice, order,
58 or other process setting forth the manner of such service shall be proof
59 of the same, and the return postcard receipt for such statement, notice,
60 order, or other process, registered and mailed as aforesaid, shall be
61 proof of the service of the same.

62 9. If a petition for judicial review of a final order is not filed in
63 accordance with section 536.100, RSMo, the commission may file a
64 certified copy of the final order with the clerk of the circuit court of
65 Cole County. The order so filed has the same effect as a judgment of
66 the court and may be recorded, enforced, or satisfied in the same

67 manner as a judgment of the court.

68 10. If a person violates or does not comply with an order under
69 this section, the commission may petition the circuit court of Cole
70 County to enforce the order. The court shall not require the
71 commission to post a bond in an action or proceeding under this
72 section. If the court finds, after service and opportunity for hearing,
73 that the person was not in compliance with the order, the court may
74 adjudge the person in civil or criminal contempt of the order. The
75 court may impose a civil penalty against the person for contempt in an
76 amount not less than five thousand dollars but not greater than one
77 hundred thousand dollars for each violation and may grant any other
78 relief the court determines is just and proper in the circumstances.

79 11. The director may, upon such notice and in such manner as he
80 or she shall deem proper, modify or set aside in whole or in part any
81 order issued by him or her under this section, until the expiration of
82 the time allowed under sections 536.100 to 536.140, RSMo, for filing a
83 petition for judicial review. If the order was filed with a court under
84 subsection 10 of this section, notice shall be given to the clerk of the
85 court. If a petition for review has been filed within such time, the
86 director shall not modify an order while the matter is pending without
87 the consent of the parties or the court.

88 12. The enforcement authority of the commission under this
89 section is cumulative to any other statutory authority of the
90 commission.

91 13. The commission is authorized to issue administrative consent
92 orders in the public interest as complete or partial settlement of any
93 investigation, audit, examination, or other proceeding, which orders
94 may contain any provision necessary or appropriate to assure
95 compliance with sections 339.500 to 339.549, or section 443.930, RSMo,
96 a voluntary forfeiture or reimbursement for the costs of the
97 investigation, examination, or audit. Any voluntary forfeiture collected
98 under this subsection shall be remitted to the school fund as provided
99 by the Missouri Constitution.

100 14. Any person willfully violating any provision of any cease and
101 desist order of the director after it becomes final, while the same is in
102 force, upon conviction thereof, shall be punished by a fine of not more
103 than one hundred thousand dollars, by imprisonment of up to ten years,

104 or by both such fine and imprisonment.

105 15. In addition to any other penalty provided, violation of any
106 cease and desist order shall subject the violator to suspension or
107 revocation of any license issued under sections 339.500 to 339.549.

108 16. As used in this section, the following terms shall mean:

109 (1) "Director", the director of the department of insurance,
110 financial institutions and professional registration;

111 (2) "Order", a formal administrative direction or command of the
112 director issued under this section or in any contested case subject to
113 the provisions of section 536.063, RSMo, or any lawful consent order,
114 but shall not include any statement of general applicability that should
115 be adopted by rule;

116 (3) "Person", any individual, partnership, corporation, association
117 or trust, or any other legal entity that has transacted, is transacting, or
118 has offered to transact business as a real estate appraiser.

119 17. The director shall have authority to promulgate procedural
120 rules to carry out the provisions of this section. Any rule or portion of
121 a rule, as that term is defined in section 536.010, RSMo, that is
122 promulgated to administer and enforce this section shall become
123 effective only if the director has fully complied with all of the
124 requirements of chapter 536, RSMo, including but not limited to,
125 section 536.028, RSMo, if applicable. If the provisions of section
126 536.028, RSMo, apply, the provisions of this section are nonseverable
127 and if any of the powers vested with the general assembly under
128 section 536.028, RSMo, to review, to delay the effective date, or to
129 disapprove and annul a rule or portion of a rule are held
130 unconstitutional or invalid, the purported grant of rulemaking
131 authority and any rule so proposed and contained in the order of
132 rulemaking shall be invalid and void.

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

9 issue a permanent or temporary injunction, restraining order, or
10 declaratory judgment.

11 2. The court may impose a civil penalty against the person of two
12 thousand five hundred dollars for each violation and may grant any
13 other relief the court determines is just and proper in the
14 circumstances.

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

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

339.549. 1. It is unlawful for any person not certified or licensed
2 pursuant to sections 339.500 to 339.549 to perform any act for which certification
3 or licensure is required. Upon application by the commission, and the necessary
4 burden having been met, a court may grant an injunction, restraining order or
5 other order as may be appropriate to enjoin a person from:

6 (1) Offering to engage or engaging in the performance of any acts or
7 practices for which a certificate or license is required by sections 339.500 to
8 339.549 upon a showing that such acts or practices were performed or offered to
9 be performed without a certificate or license; [or]

10 (2) Engaging in any practice or business authorized by a certificate or
11 license issued pursuant to sections 339.500 to 339.549 upon a showing that the
12 holder presents a substantial probability of serious danger to the health, safety
13 or welfare of any resident of this state or client of the certificate holder or
14 licensee; or

15 (3) Engaging in or committing, or assisting any person in
16 engaging in or committing, any practice or act of mortgage fraud, as
17 defined in section 443.930, RSMo.

18 2. Any such action shall be commenced in the county in which such
19 conduct occurred or in the county in which the defendant resides.

20 3. Any actions brought pursuant to this section shall be in addition to and

21 not in lieu of any penalty provided by sections 339.500 to 339.549 and may be
22 brought concurrently with other actions to enforce the provisions of this chapter.

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 residential real
7 estate whether in the affairs of an exempt entity or in the affairs of one
8 or more licensees [and may be permanent or for a specific shorter period of time]
9 under sections 443.800 to 443.893, or in the affairs of any financial
10 institution under the jurisdiction of the director. An order of removal
11 or of prohibition may be permanent or for a specific term and may
12 impose additional conditions including requiring restitution and
13 imposition of a civil penalty not exceeding five thousand dollars per
14 occurrence. The findings required by this section may be any one or more of
15 the following:**

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

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

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

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

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

443.930. 1. As used in this section, the term "person" shall mean
2 a mortgage broker, loan broker, real estate broker, real estate
3 salesperson, real estate appraiser, title agent, title insurer, or other
4 party to a real estate transaction.

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

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

8 (2) Make an untrue statement of a material fact or to omit to
9 state a material fact necessary in order to make the statement made, in

10 the light of the circumstances under which it is made, not misleading;
11 or

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

16 3. Such acts shall be deemed to constitute mortgage fraud.

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 or

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

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

14 3. Mortgage fraud is a class C felony.

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

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

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

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

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

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

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

30 6. Prosecution under the provisions of this section shall not

31 **preclude:**

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

34 **(2) A civil action by any person;**

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

37 **(4) A civil forfeiture action; or**

38 **(5) An action under chapter 407, RSMo.**

621.045. 1. The administrative hearing commission shall conduct
 2 hearings and make findings of fact and conclusions of law in those cases when,
 3 under the law, a license issued by any of the following agencies may be revoked
 4 or suspended or when the licensee may be placed on probation or when an agency
 5 refuses to permit an applicant to be examined upon his qualifications or refuses
 6 to issue or renew a license of an applicant who has passed an examination for
 7 licensure or who possesses the qualifications for licensure without examination:

8 Missouri State Board of Accountancy

9 Missouri State Board for Architects, Professional Engineers, Professional
 10 Land Surveyors and Landscape Architects

11 Board of Barber Examiners

12 Board of Cosmetology

13 Board of Chiropractic and Podiatry

14 Board of Chiropractic Examiners

15 Missouri Dental Board

16 Board of Embalmers and Funeral Directors

17 Board of Registration for the Healing Arts

18 Board of Nursing

19 Board of Optometry

20 Board of Pharmacy

21 Missouri Real Estate Commission

22 Missouri Veterinary Medical Board

23 Supervisor of Liquor Control

24 Department of Health and Senior Services

25 Department of Insurance

26 Department of Mental Health

27 Board of Private Investigator Examiners.

28 2. If in the future there are created by law any new or additional

29 administrative agencies which have the power to issue, revoke, suspend, or place
30 on probation any license, then those agencies are under the provisions of this law.

31 **3. The administrative hearing commission is authorized to**
32 **conduct hearings and make findings of fact and conclusions of law in**
33 **those cases referred by the Missouri real estate appraisers commission**
34 **under section 339.542, RSMo.**

35 4. The administrative hearing commission is authorized to conduct
36 hearings and make findings of fact and conclusions of law in those cases brought
37 by the Missouri state board for architects, professional engineers, professional
38 land surveyors and landscape architects against unlicensed persons under section
39 327.076, RSMo.

40 [4.] 5. Notwithstanding any other provision of this section to the
41 contrary, after August 28, 1995, in order to encourage settlement of disputes
42 between any agency described in subsection 1 or 2 of this section and its
43 licensees, any such agency shall:

44 (1) Provide the licensee with a written description of the specific conduct
45 for which discipline is sought and a citation to the law and rules allegedly
46 violated, together with copies of any documents which are the basis thereof and
47 the agency's initial settlement offer, or file a contested case against the licensee;

48 (2) If no contested case has been filed against the licensee, allow the
49 licensee at least sixty days, from the date of mailing, to consider the agency's
50 initial settlement offer and to contact the agency to discuss the terms of such
51 settlement offer;

52 (3) If no contested case has been filed against the licensee, advise the
53 licensee that the licensee may, either at the time the settlement agreement is
54 signed by all parties, or within fifteen days thereafter, submit the agreement to
55 the administrative hearing commission for determination that the facts agreed
56 to by the parties to the settlement constitute grounds for denying or disciplining
57 the license of the licensee; and

58 (4) In any contact under this subsection by the agency or its counsel with
59 a licensee who is not represented by counsel, advise the licensee that the licensee
60 has the right to consult an attorney at the licensee's own expense.

61 [5.] 6. If the licensee desires review by the administrative hearing
62 commission under subdivision (3) of subsection [4] 5 of this section at any time
63 prior to the settlement becoming final, the licensee may rescind and withdraw
64 from the settlement and any admissions of fact or law in the agreement shall be

65 deemed withdrawn and not admissible for any purposes under the law against the
66 licensee. Any settlement submitted to the administrative hearing commission
67 shall not be effective and final unless and until findings of fact and conclusions
68 of law are entered by the administrative hearing commission that the facts agreed
69 to by the parties to the settlement constitute grounds for denying or disciplining
70 the license of the licensee.

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