Regular Session, 1997

HOUSE BILL NO. 1592

BY REPRESENTATIVE TRAVIS

CREDIT/CONSUMER LOANS: Provides relative to the regulation of loan brokers

AN ACT

To amend and reenact R.S. 9:3572.1, 3572.2(A)(introductory paragraph) and (2) and (B)(introductory paragraph) and (1), 3572.3(A), 3572.4, 3572.5(A)(introductory paragraph), (1)(g) and (h), (2)(g), (h), and (i), and (B)(2)(introductory paragraph), 3572.6, 3572.7, 3572.8(A), 3572.9, 3572.10, 3572.11, 3572.12(B) through (D) and (E)(1), relative to loan brokers; to provide a definition; to provide for exceptions to licensing and bond requirements; to provide relative to licensing procedure; to provide relative to records and examination by the commissioner; to provide relative to violations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:3572.1, 3572.2(A)(introductory paragraph) and (2) and (B)(introductory paragraph) and (1), 3572.3(A), 3572.4, 3572.5(A)(introductory paragraph), (1)(g) and (h), (2)(g), (h), and (i), and (B)(2)(introductory paragraph), 3572.6, 3572.7, 3572.8(A), 3572.9, 3572.10, 3572.11, 3572.12(B) through (D) and (E)(1)are hereby amended and reenacted to read as follows:

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§3572.1. ~~Consumer~~Loan broker defined

A "~~consumer~~ loan broker" is defined as any person who, for compensation or the expectation of compensation, obtains or offers to obtain a consumer or federally related mortgage loan from a third party either for another person domiciled in Louisiana, or for another person wherever domiciled, if the broker is operating in Louisiana.

§3572.2. Exemptions; ~~registration~~ licensing and bonding; ~~consumer~~ loan broker

A. The following shall be excepted from the ~~registration~~ licensing and bonding provisions of this Part:

* * *

(2) A lender licensed by the commissioner of financial institutions to make consumer loans pursuant to the Louisiana Consumer Credit Law.

* * *

B. The following shall be excepted from the definition of a ~~consumer~~ loan broker:

(1) An attorney licensed to practice law in the state of Louisiana when such attorney is not actively engaged in the business of brokering consumer or federally related mortgage loans and when the brokering is incidental to the provision of other legal services.

* * *

§3572.3. ~~Registration~~ Licensure required

A.(1) Unless a person has first been ~~issued a registration certificate from~~ licensed by the commissioner as provided in this Part, he shall not engage in the business of ~~consumer~~ loan brokering, and shall not advertise or solicit, whether in print, by letter, in person, or

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otherwise in Louisiana, that he will find lenders for consumer or federally related mortgage loans. The initial license and annual ~~registration~~ renewal fee shall be one hundred dollars.

(2) The annual renewal application and fee ~~and registration~~ are due on or before January first of each year. The form and content of renewal applications shall be determined by the commissioner of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application, or may be denied if administrative proceedings to suspend or revoke the ~~registration~~ license have begun. If the commissioner has not received the annual renewal ~~registration~~ application and fee ~~by~~ postmarked on or before January sixteenth, he shall notify the ~~consumer~~ loan broker by United States mail and assess a late fee of fifty dollars.

(3) If the commissioner has not received the annual renewal ~~registration~~ application, renewal fee and late fee ~~by~~ postmarked on or before March thirty-first, the ~~registration~~ license shall automatically ~~expire~~ lapse without a hearing or notification, and any consumer or federally related mortgage loan brokered after that date shall be a violation and punishable pursuant to R.S. 9:3572.12(B).

* * *

§3572.4. Corporation

A corporation that is a ~~consumer~~ loan broker shall be ~~registered~~ licensed and shall act as a consumer loan broker only through natural persons who are registered consumer loan brokers.

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§3572.5. ~~Registration~~ Application form

A. The commissioner of financial institutions shall provide ~~a registration~~ an application form that requires at least the following information which shall be given by the applicant:

* * *

(1) For a natural person:

* * *

(g) Names and addresses of the lenders through which the principal amount of the consumer or federally related mortgage loans are brokered.

(h) Number of consumer or federally related mortgage loans brokered in the past one-year period.

* * *

(2) For a corporation:

* * *

(g) Name of each ~~registered consumer~~ licensed loan broker through which it will conduct business.

(h) Names and addresses of the lenders through which the principal amount of consumer loans or federally related mortgage are brokered.

(i) Number of consumer or federally related mortgage loans brokered in the past one-year period.

* * *

B.

* * *

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(2) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a ~~consumer~~ loan broker license if either of the following occurs:

* * *

§3572.6. Restrictions; place of business; records

A. A ~~consumer~~ loan broker shall broker a consumer loan or federally related mortgage only to a lender licensed by the office of financial institutions or to a supervised financial organization that is exempt from licensure.

B. Each ~~consumer~~ loan broker shall maintain a place of business in Louisiana. Each such broker shall maintain a copy of ~~the~~ all Federal ~~Truth in Lending~~ Disclosure ~~Statements~~ Statements from each loan that he brokers and a copy of the disclosure ~~statements~~ statements given to each person pursuant to R.S. 9:3572.11, which shall be available for inspection at his place of business in Louisiana.

C. Except as specified by this Part, no ~~consumer~~ loan broker may assess, contract for, or receive any type of fee, interest, or other charge in advance, except for expense deposits under conditions specified in this Subsection, from a potential borrower for the procurement of a loan. A ~~consumer~~ loan broker may accept an advance expense deposit, but such deposit shall not exceed the good faith estimate of the actual cost of any appraisal, title search, or credit reports performed by an independent person and required by the originating lender for the evaluation of the potential borrower's loan application. Any expense deposit that exceeds the actual cost of any appraisal, title search, or credit reports must be promptly refunded to

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the borrower or credited to the borrower's account at the time of the loan closing.

§3572.7. Examination; rules

A. The commissioner of financial institutions, through his employees, may examine the records of a ~~registered consumer~~ loan broker at any time during normal business hours without prior notice.

B. The commissioner may issue rules and regulations to implement this Part and may require that additional information be disclosed in the ~~registration~~ licensure form.

§3572.8. Bond or trust account required

A. Every ~~consumer~~ loan broker, except those loan brokers employed by a corporation with a valid loan broker's license, must obtain a surety bond issued by a surety company authorized to do business in Louisiana, or establish a trust account with a ~~licensed and~~ federally insured bank or savings institution located in Louisiana. The amount of the bond or trust account shall be twenty-five thousand dollars. The bond or trust account shall be in favor of the state of Louisiana. Any person damaged by the ~~consumer~~ loan broker's breach of contract or of any obligation arising therefrom, or by any violation of law, or the attorney general seeking additional relief from R.S. 51:1408, may bring an action against the bond or trust account to recover monies therefrom. The aggregate liability of the surety or trustee shall be only for actual damages or additional relief under R.S. 51:1408 and in no event shall exceed the amount of the bond or trust account.

* * *

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§3572.9. Rebate upon prepayment

Whenever a lender that funded a brokered consumer or federally related mortgage loan is required to rebate unearned loan finance charges or credit service charges to the consumer due to prepayment or the acceleration of maturity, the ~~consumer~~ loan broker shall refund to the lender the proportion of the broker's fee that must be rebated by the lender. This refund shall be made within seven days of the lender's furnishing proof to the broker of the required rebate.

§3572.10. Contracts to be in writing

Every ~~consumer~~ loan brokerage contract shall be in writing and signed by all contracting parties. A copy of the contract shall be given to the prospective borrower at the time he signs the contract.

§3572.11. Required disclosure statement

A. At least seven days prior to the time any person signs a contract for the services of a ~~consumer~~ loan broker, or the time of the receipt of any consideration by the ~~consumer~~ loan broker, whichever occurs first, the loan broker must provide to the ~~party~~ borrower with whom he contracts a written document, the cover sheet of which is entitled in at least ten point bold-face capital letters "DISCLOSURE REQUIRED BY LOUISIANA LAW". Under this title shall appear the statement in at least ten point type that "The state of Louisiana has not reviewed and does not approve, or disapprove any ~~consumer~~ loan brokerage contract. The information contained in this disclosure has not been verified by the state. If you have any questions see an attorney before you sign a contract agreement." Nothing except the title and required statement shall appear on the cover sheet.

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B. The disclosure document shall contain the following information:

(1) The name of the ~~consumer~~ loan broker; whether the loan broker is doing business as an individual, partnership, or corporation; the names under which the loan broker has done, is doing, or intends to do business; and the name of any parent or affiliated companies.

(2) The names, addresses, and titles of the ~~consumer~~ loan broker's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with responsibility for the broker's business activities~~; and all the broker's employees located in Louisiana~~.

(3) The length of time the ~~consumer~~ loan broker has conducted business as a ~~consumer~~ loan broker.

(4) A full and detailed description of the actual services that the ~~consumer~~ loan broker undertakes to perform for the prospective borrower.

(5) One of the following statements, whichever is appropriate:

(a) "As required by Louisiana law, this ~~consumer~~ loan broker has secured a bond by _____, a surety authorized to do business in this state. A certified copy of this bond is filed with the commissioner of financial institutions. Before signing a contract with this loan broker, you should check with the surety company to determine the bond's current status.", or

(b) "As required by Louisiana law, this ~~consumer~~ loan broker has established a trust account (number of account) with (name/address of bank or savings institution). Before signing a contract with this loan

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broker you should check with the bank or savings institution to determine the current status of the trust account."

§3572.12. Violations; penalties

* * *

B. A person who violates a provision of this Part ~~shall~~ may be ~~fined~~ assessed a civil penalty of not more than one thousand dollars for each violation. The commissioner may maintain a civil action in a court of competent jurisdiction to recover such a ~~fine~~ civil penalty, together with his costs and attorney fees incident to such action.

C. The commissioner may, after a hearing pursuant to the Administrative Procedure Act, suspend or revoke the ~~registration~~ license of a ~~consumer~~ loan broker, upon a finding that the loan broker violated a provision of this Part or a rule or regulation of the commissioner issued pursuant thereto, or that the loan broker willfully, either orally or in writing, misrepresented the terms, benefits, privileges, or provisions of any service contract issued or to be issued by the loan broker or by any lender.

D. The contracting to receive any fee, interest, or other charge in violation of this Chapter shall result in forfeiture by the ~~consumer~~ loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee. In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee.

E. Whenever it shall appear to the commissioner, either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act, practice, or transaction which is

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prohibited by this Part or by any order of the commissioner issued pursuant to any Section of this Part, or which is declared to be illegal in this Part, the commissioner may, in his discretion:

(1) Issue any order, including but not limited to cease and desist orders, which he deems necessary or appropriate in the public interest or for the protection of the public. Any person aggrieved by an order issued pursuant to this Subsection may request a hearing before the ~~department~~ commissioner if such request is made within ten days after receipt of the order. Any such hearing or appeal therefrom shall be held in accordance with the Administrative Procedure Act.

* * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Travis HB No. 1592

Present law defines a "consumer loan broker" as any person who for compensation offers to obtain a consumer loan for another person.

Proposed law changes the wording from "consumer loan broker" to "loan broker" and further provides that a "loan broker" is anyone who offers to obtain a consumer or federally related mortgage loan for another person.

Present law requires a consumer loan broker to obtain a certificate of registration from the commissioner in order to do business.

Proposed law deletes the requirement of a certificate of registration and instead requires that a loan broker obtain a license from the commissioner.

Present law provides relative to registration forms, disclosure statements, and restrictions on places of business and retention of records for consumer loan brokers.

Proposed law retains present law but changes all references to "registration" to "license" and "consumer loan broker" to "loan broker".

Present law provides that any person who violates the provisions of the present law shall be fined not more than $1000 for each violation.

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Proposed law deletes the reference to a fine and provides that anyone who violates the provisions may be assessed a civil penalty of not more than $1000.

(Amends R.S. 9:3572.1, 3572.2(A)(intro. para.) and (2) and (B)(intro. para.) and (1), 3572.3(A), 3572.4, 3572.5(A)(intro. para.), (1)(g) and (h), (2)(g), (h), and (i), and (B)(2)(intro. para.), 3572.6, 3572.7, 3572.8(A), 3572.9, 3572.10, 3572.11, 3572.12(B)-(D) and (E)(1))

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