ENROLLED HOUSE
BILL NO. 1581

By: Piatt of the House

and

Crain of the Senate

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 2082 and 2083, as amended by Sections 1 and 2, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2004, Sections 2082 and 2083), which relate to mortgage brokers; defining term; modifying licensing exemptions to include mortgage broker; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 2082, as amended by Section 1, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2004, Section 2082), is amended to read as follows:

Section 2082. As used in the "Mortgage Broker Licensure Act":

1. "Administrator" means the Administrator of Consumer Credit;

2. "Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified;

3. "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan;

4. "Commission" means the Commission on Consumer Credit;

5. "Compensation" means anything of value or any benefit including points, commissions, bonuses, referral fees and loan origination fees;

6. "Employee" means an individual who has an employment relationship acknowledged by both the employee and the mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws;

7. "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with

respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws;

8. "Investor" means a person who lends or invests money in mortgage loans;

9. “Loan processor” means an individual who works under the instruction of a mortgage loan originator or mortgage broker and performs only clerical functions such as gathering information, requesting information, word processing, sending correspondence or amending files;

10. "Mortgage loan originator" means a person who is not exempt under Section 2083 of this title and who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a residential mortgage loan for or on behalf of a licensed mortgage broker;

11. “Mortgage banker” means any person who accepts an application for a mortgage loan or makes a mortgage loan and:

a. is an approved or authorized mortgagee with direct endorsement underwriting authority granted by the United States Department of Housing and Urban Development, or

b. closes mortgage loans in its corporate name as the originating mortgagee and funds a minimum of eighty percent (80%) of the total annual numeric volume of mortgage loans it originates for sale into the secondary mortgage market with its own corporate funds, or

c. is approved as a seller or servicer by the Federal National Mortgage Association, Federal Home Loan Mortgage Association or the Government National Mortgage Association;

12. “Mortgage broker" means any person who is not exempt under Section 2083 of this title and who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a residential mortgage loan;

~~12.~~ 13. "Person" means an individual, corporation, company, limited liability company, partnership, association, or similar legal entity;

~~13.~~ 14. “Mortgage loan" means any loan secured by a mortgage, deed of trust or any lien interest on residential real estate located in this state created with the consent of the owner of the real estate; and

~~14.~~ 15. "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies,

title companies, appraisers, structural and pest inspectors, or escrow companies.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 2083, as amended by Section 2, Chapter 469, O.S.L. 2002 (59 O.S. Supp. 2004, Section 2083), is amended to read as follows:

Section 2083. The following are exempt from all provisions of the Mortgage Broker Licensure Act:

1. Any person authorized to do business under the laws of this state or the United States regulating commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, supervised lenders as defined in paragraph 2 of Section 3-501 of Title 14A of the Oklahoma Statutes or affiliates or subsidiaries thereof, or real estate investment trusts as defined in 26 U.S.C., Section 856 and the affiliates, subsidiaries, and service corporations thereof;

2. Any attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

3. Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

4. Any mortgage broker solely engaged in transactions approved and subject to auditing by the Federal National Mortgage Association, the Government National Mortgage Association, the Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, or the Department of Veterans Affairs;

5. The United States of America, the State of Oklahoma, any other state and any political subdivision of this state, or their instrumentalities;

6. Any real estate broker or sales associate licensed by this state who assists the borrower in obtaining financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker or associate and who receives only the customary real estate broker's or associate's commission in connection with the transaction;

7. Any real estate broker or sales associate licensed by this state who provides only information regarding rates, terms, and lenders, who receives a fee for providing such information, who conforms to all rules of the Oklahoma Real Estate Commission with respect to the providing of such service, and who discloses on a form approved by the Administrator of Consumer Credit that to obtain a loan the borrower must deal directly with a mortgage broker or lender; however, such real estate broker or sales associate shall not be exempt if he or she does any of the following:

a. holds himself or herself out as able to obtain a mortgage loan from a lender for another,

b. accepts a mortgage loan application, or submits a mortgage loan application to a lender,

c. accepts any deposit for third-party services or any compensation from a borrower, whether such compensation is paid before, upon, or after the closing of the mortgage loan, or

d. negotiates rates or terms with a lender on behalf of a borrower;

8. Any insurance company or its affiliates, subsidiaries, and service corporations authorized to do business under the laws of this state and any agent of any such insurance company, affiliate, subsidiary, or service corporation:

a. if the agent holds a current license as an insurance agent from the Insurance Department,

b. if the agent performs services which would otherwise require a license under the Mortgage Broker Licensure Act only for an insurance company, affiliate, subsidiary, or service corporation for which the agent has been appointed and the appointment has been approved by the Insurance Commissioner, and

c. if the insurance company, affiliate, subsidiary, or service corporation agrees to accept liability for the acts of its agents; ~~and~~

9. Any employee of a person licensed or exempt from licensing under this act when acting within the scope of their employment; and

10. A mortgage banker as defined in paragraph 11 of Section 2082 of this title.

SECTION 3. This act shall become effective July 1, 2005.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 14th day of March, 2005.

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Presiding Officer of the House of Representatives

Passed the Senate the 25th day of April, 2005.

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Presiding Officer of the Senate