

CHAPTER 98**(HB 102)**

AN ACT relating to mortgage loan companies and brokers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 294.020 is amended to read as follows:

- (1) The following shall be exempt from this chapter:
 - (a) Any person *duly licensed, chartered, or otherwise subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency*~~doing business~~ under the laws of this state or any other state or the United States *as a bank*~~relating to banks~~, bank holding *company*~~companies~~, trust *company*~~companies~~, credit *union*~~unions~~, savings and loan *association*~~associations~~, service corporation *subsidiary*~~subsidiaries~~ of savings and loan associations, consumer *loan or finance company*~~companies~~, industrial loan *company*~~companies~~, insurance *company*~~companies~~, ~~or~~ real estate investment *trust*~~trusts~~ as defined in 26 U.S.C. sec. 856 ~~and the affiliates of such companies~~, ~~or~~ an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended, *or wholly owned subsidiary of any institution listed in this paragraph if the institution maintains a place of business in Kentucky;*
 - (b) An attorney-at-law licensed to practice law in Kentucky who is not principally engaged in the business of negotiating mortgage loans, when the person renders services in the course of his practice as an attorney-at-law;
 - (c) Any person doing any act under order of any court;
 - (d) The United States of America, the Commonwealth of Kentucky, or any other state, and any Kentucky city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the foregoing;
 - (e) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
 - (f) With the approval of the commissioner, an independent contractor that solicits mortgage loans for only one (1) licensed mortgage loan company or licensed mortgage loan broker may be exempted from obtaining a license under this chapter if:
 1. The licensed mortgage loan company or licensed mortgage loan broker notifies the department that it will assume legal responsibility for the actions of the independent contractor in complying with the provisions of KRS Chapter 294; and
 2. The licensed mortgage loan company or licensed mortgage loan broker provides the department with proof that its bond will cover the independent contractor;
 - (g) *Any mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A.*
- (2) The following shall be exempt from all the provisions of this chapter except that they shall be subject to the examination or investigation provisions of KRS 294.170(4), (5), and (6), 294.180, and 294.190 if it appears on grounds satisfactory to the commissioner, on written

complaint, that an examination or investigation is necessary, and they shall be subject to the prohibited acts provisions of KRS 294.220:

- (a) Mortgage loan companies or mortgage loan brokers regulated by the Department of Housing and Urban Development;
 - (b) Any natural person making a mortgage loan with his or her own funds for the person's own investment without intent to resell the mortgage loan;
 - (c) Any person doing business under the laws of this state or the United States relating to any broker-dealer, agent, or investment adviser duly registered with the Department of Financial Institutions;
 - (d) Any person licensed in this state as a real estate broker or real estate sales associate, not actively engaged in the business of negotiating loans secured by real property, when the person renders the services in the course of his or her practice as a real estate broker or real estate associate; and
 - (e) Any person making less than five (5) mortgage loans per year.
- (3) Any person relying upon an exemption under subsection (2)(c) or (d) of this section shall file with the commissioner a claim of exemption. The commissioner shall thereafter determine the availability of the claimed exemption and he shall not disallow an exemption that is validly claimed.
- (4) *Any person listed in subsection (1)(a), (b), (c), (d), or (e) of this section shall not be required to file with the commissioner a claim of exemption.*
- (5) (a) *Any natural person making a loan under subsection (2)(b) of this section shall make the following disclosure, on a separate sheet of paper in minimum eighteen (18) point type, to the borrower:*

DISCLOSURE

(Name and address of lender) is not licensed or regulated by the Kentucky Department of Financial Institutions.

(Name of lender) is making this mortgage loan with his or her own funds, for the person's own investment, without intent to resell the mortgage loan.

(The phone number and address of the Kentucky Department of Financial Institutions).

(b) *A copy of the disclosure, signed by the borrower, shall be maintained by the natural person for a period not to exceed three (3) years after the date the mortgage loan is paid in full.*

(c) *This subsection shall not apply to a natural person under subsection (2)(b) of this section making less than five (5) mortgage loans per year.*

Section 2. KRS 294.030 is amended to read as follows:

- (1) (a) It is unlawful for any person to transact business in this state, either directly or indirectly, as a mortgage loan company or mortgage loan broker if he is not licensed under this chapter, unless ~~that~~^{such} person is exempt under KRS 294.020 *and, if required by subsection (3) of Section 1 of this Act to file a claim of exemption, has filed a claim of exemption and the filed claim of exemption has been allowed by the commissioner.*

(b) It is unlawful for any natural person to make a loan under subsection (2)(b) of Section 1 of this Act without making the disclosure required by subsection (5) of Section 1 of this Act.

- (2) Neither the fact that a license has been issued nor the fact that any person, business, or company is effectively registered, constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Nor does such fact directly or indirectly imply approval of the registrant by the commissioner or the Commonwealth of Kentucky. It is unlawful to make or cause to be made to any prospective customer or client any representation inconsistent with this subsection.
- (3) Any person who willfully transacts business in this state in violation of subsection (1) of this section shall have no right to collect, receive, or retain any interest or charges whatsoever on a loan contract, but the unpaid principal of the loan shall be paid in full.***

Section 3. KRS 294.220 is amended to read as follows:

- (1) It shall be unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this chapter, any statement which is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.
- (2) It shall be unlawful for any mortgage loan company or mortgage loan broker, in connection with the operation of a mortgage loan business or the management or servicing of mortgage contracts, directly or indirectly:
- (a) To employ a device, scheme, or artifice to defraud;
 - (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
 - (c) To fail to disburse funds in accordance with a loan commitment;
 - (d) To delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
 - (e) Upon receipt of a customer's written request, to delay beyond two (2) business days the issuance of a written loan payoff amount or to delay beyond ten (10) business days the issuance of a payment history; ***or***
 - (f) To charge a fee for the issuance of an initial written loan payoff amount or payment history for each calendar quarter as set out in paragraph (e) of this subsection.***
- (3) Unless exempted by KRS 294.020, ***and, if required by subsection (3) of Section 1 of this Act to file a claim of exemption, has filed a claim of exemption and the filed claim of exemption has been allowed by the commissioner,*** it shall be unlawful for any person to transact any mortgage loan business in this state unless it:
- (a) Qualifies to do business in Kentucky as required by KRS Chapter 271B; and
 - (b) Complies with the provisions of this chapter.

Approved March 15, 2001