



House of Representatives

General Assembly

File No. 87

January Session, 2007

House Bill No. 5344

House of Representatives, March 20, 2007

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT REQUIRING DISCLOSURE WITH RESPECT TO REFERRAL FEES FOR MORTGAGE SERVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2007*) The Department of Banking,
2 in consultation with the Department of Consumer Protection, shall
3 adopt regulations, in accordance with chapter 54 of the general
4 statutes, that require a first mortgage broker and secondary mortgage
5 broker licensed under chapter 668 of the general statutes and a real
6 estate broker and real estate salesperson licensed under chapter 392 of
7 the general statutes to each provide to any person who is obtaining a
8 mortgage in connection with the financing of a purchase of a one-to-
9 four family owner-occupied residence a disclosure that such first
10 mortgage broker, secondary mortgage broker, real estate broker or real
11 estate salesperson, as applicable, is neither giving nor receiving any
12 fee, kickback or other thing of value pursuant to any agreement or
13 understanding, oral or otherwise, that business incident to or a part of
14 a settlement service involving such mortgage financing shall be

15 referred to any person. The disclosure required by this section shall not
16 apply to any fee, salary, compensation or other payment not
17 prohibited by Section 8 of the Real Estate Settlement Procedures Act,
18 12 USC 2607.

19 Sec. 2. Section 20-320 of the general statutes is repealed and the
20 following is substituted in lieu thereof (*Effective July 1, 2008*):

21 The Department of Consumer Protection may, upon the request of
22 the commission or upon the verified complaint in writing of any
23 person, if such complaint, or such complaint together with evidence,
24 documentary or otherwise, presented in connection with such
25 complaint, shall make out a prima facie case, investigate the actions of
26 any real estate broker or real estate salesperson or any person who
27 assumes to act in any of such capacities within this state. The
28 commission may temporarily suspend or permanently revoke any
29 license issued under the provisions of this chapter and, in addition to
30 or in lieu of such suspension or revocation, may, in its discretion,
31 impose a fine of not more than two thousand dollars at any time when,
32 after proceedings as provided in section 20-321, the commission finds
33 that the licensee has by false or fraudulent misrepresentation obtained
34 a license or that the licensee is guilty of any of the following: (1)
35 Making any material misrepresentation; (2) making any false promise
36 of a character likely to influence, persuade or induce; (3) acting as an
37 agent for more than one party in a transaction without the knowledge
38 of all parties for whom the licensee acts; (4) representing or attempting
39 to represent a real estate broker other than the licensee's employer or
40 the broker with whom the licensee is affiliated, without the express
41 knowledge and consent of the licensee's employer or affiliated broker;
42 (5) failing, within a reasonable time, to account for or remit any
43 moneys coming into the licensee's possession which belong to others;
44 (6) entering into an exclusive listing contract or buyer agency contract
45 which contains a fixed termination date if such contract also provides
46 for an automatic continuation of the period of such contract beyond
47 such date; (7) failing to deliver immediately a copy of any instrument
48 to any party or parties executing the instrument, where such

49 instrument has been prepared by the licensee or under the licensee's
50 supervision and where such instrument relates to the employment of
51 the licensee or to any matters pertaining to the consummation of a
52 lease, or the purchase, sale or exchange of real property or any other
53 type of real estate transaction in which the licensee may participate as
54 a broker or a salesperson; (8) conviction in a court of competent
55 jurisdiction of forgery, embezzlement, obtaining money under false
56 pretenses, larceny, extortion, conspiracy to defraud, or other like
57 offense or offenses, provided suspension or revocation under this
58 subdivision shall be subject to the provisions of section 46a-80; (9)
59 collecting compensation in advance of services to be performed and
60 failing, upon demand of the person paying the compensation or the
61 commission, to render an accounting of the use of such money; (10)
62 commingling funds of others with the licensee's own, or failing to keep
63 funds of others in an escrow or trustee account; (11) any act or conduct
64 which constitutes dishonest, fraudulent or improper dealings; (12)
65 failing to provide the disclosures required by section 20-325c; (13)
66 failing to provide the disclosure required in regulations adopted under
67 section 1 of this act; [(13)] (14) a violation of any provision of this
68 chapter or any regulation adopted under this chapter. Any fine
69 collected pursuant to this section shall be deposited in the Real Estate
70 Guaranty Fund established pursuant to section 20-324a.

71 Sec. 3. Subsection (a) of section 36a-494 of the general statutes is
72 repealed and the following is substituted in lieu thereof (*Effective July*
73 *1, 2008*):

74 (a) (1) The commissioner may suspend, revoke or refuse to renew
75 any license, in accordance with the provisions of section 36a-51, for any
76 reason which would be sufficient grounds for the commissioner to
77 deny an application for a license under sections 36a-485 to 36a-498a,
78 inclusive, or if the commissioner finds that the licensee or any
79 proprietor, director, officer, member, partner, shareholder, trustee,
80 employee or agent of such licensee has done any of the following: (A)
81 Made any material misstatement in the application; (B) committed any
82 fraud, misappropriated funds or misrepresented, concealed,

83 suppressed, intentionally omitted or otherwise intentionally failed to
84 disclose any of the material particulars of any first mortgage loan
85 transaction, including disclosures required by subdivision (6) of
86 subsection (a) of section 36a-493, or part III of chapter 669 or
87 regulations adopted pursuant thereto, to anyone entitled to such
88 information; (C) violated any of the provisions of this title or of any
89 regulations adopted pursuant thereto, or any other law or regulation
90 applicable to the conduct of its business; (D) failed to provide the
91 disclosure required in regulations adopted under section 1 of this act;
92 or [(D)] (E) failed to perform any agreement with a licensee or a
93 borrower.

94 (2) The commissioner may suspend, revoke or refuse to renew any
95 registration of an originator, in accordance with the provisions of
96 section 36a-51, for any reason which would be sufficient grounds for
97 the commissioner to deny an application for a registration under
98 sections 36a-485 to 36a-498a, inclusive, or if the commissioner finds
99 that the registrant has committed any fraud, misappropriated funds,
100 misrepresented any of the material particulars of any first mortgage
101 loan transaction or has violated any of the provisions of this title or of
102 any regulations adopted pursuant to such title or any other law or
103 regulation applicable to the conduct of such registrant's business.

104 Sec. 4. Subsection (a) of section 36a-517 of the general statutes is
105 repealed and the following is substituted in lieu thereof (*Effective July*
106 *1, 2008*):

107 (a) (1) The commissioner may suspend, revoke or refuse to renew
108 any license, in accordance with section 36a-51, for any reason which
109 would be sufficient grounds for the commissioner to deny an
110 application for a license under sections 36a-510 to 36a-524, inclusive, or
111 if the commissioner finds that the licensee or any proprietor, director,
112 officer, member, partner, shareholder, trustee, employee or agent of
113 such licensee has done any of the following: (A) Made any material
114 misstatement in the application; (B) committed any fraud,
115 misappropriated funds or misrepresented, concealed, suppressed,

116 intentionally omitted or otherwise intentionally failed to disclose any
 117 of the material particulars of any secondary mortgage loan transaction,
 118 including disclosures required by part III of chapter 669 or regulations
 119 adopted pursuant thereto, to anyone entitled to such information; (C)
 120 violated any of the provisions of this title, or of any regulations
 121 adopted pursuant thereto or any other law or regulation applicable to
 122 the conduct of its business; (D) failed to provide the disclosure
 123 required in regulations adopted under section 1 of this act; or [(D)] (E)
 124 failed to perform any agreement with a licensee or a borrower.

125 (2) The commissioner may suspend, revoke or refuse to renew any
 126 registration of an originator, in accordance with the provisions of
 127 section 36a-51, for any reason which would be sufficient grounds for
 128 the commissioner to deny an application for a registration under
 129 sections 36a-510 to 36a-524, inclusive, or if the commissioner finds that
 130 the registrant has committed any fraud, misappropriated funds,
 131 misrepresented any of the material particulars of any secondary
 132 mortgage loan transaction or has violated any of the provisions of this
 133 title or of any regulations adopted pursuant to such title or any other
 134 law or regulation applicable to the conduct of such registrant's
 135 business.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	New section
Sec. 2	<i>July 1, 2008</i>	20-320
Sec. 3	<i>July 1, 2008</i>	36a-494(a)
Sec. 4	<i>July 1, 2008</i>	36a-517(a)

BA *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Consumer Protection, Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The Department of Consumer Protection could experience a minimal increase in penalty revenue, due to violations of this bill. In FY 06, DCP realized approximately \$6.5 million for real estate salesperson and broker licenses, and experienced revenue of approximately \$918,000 for penalties of all types.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations, which is unknown at this time.

OLR Bill Analysis**HB 5344*****AN ACT REQUIRING DISCLOSURE WITH RESPECT TO REFERRAL FEES FOR MORTGAGE SERVICES.*****SUMMARY:**

This bill requires the Banking Department to adopt regulations, in consultation with the Consumer Protection Department, requiring disclosures about referral fees. Specifically, the regulations must require first and second mortgage broker licensees and real estate broker and salesperson licensees to each provide a disclosure to anyone obtaining a mortgage on a one-to-four family, owner-occupied residence. The disclosure must state that the licensee is not giving or receiving anything of value pursuant to any agreement or understanding that the business related to or part of a settlement service involving the mortgage's financing be referred to any person. The bill specifically excludes from the scope of the regulations payments that are not prohibited by the federal Real Estate Settlement Procedures Act (RESPA).

The bill adds failure to provide the disclosure required in the new regulations to the grounds for which the Consumer Protection Department may suspend or revoke the license of a real estate salesperson or broker or, after proper proceedings, impose a fine of up to \$2,000 on her. It adds failure to provide the disclosure to the grounds for which the banking commissioner can suspend, revoke, or refuse to renew a first and second mortgage broker and lender license. However, the disclosure requirements apply only to brokers, not lenders.

EFFECTIVE DATE: July 1, 2008, except for the provision requiring the adoption of regulations, which is effective July 1, 2007.

BACKGROUND**RESPA**

RESPA generally prohibits payment of referral fees, unearned fees or kickbacks, and the splitting or sharing of fees or charges made or received for providing "real estate settlement services." However, RESPA states that it should not be construed as prohibiting the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or services actually performed.

COMMITTEE ACTION

Banks Committee

Joint Favorable

Yea 18 Nay 0 (03/06/2007)