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**AMENDMENT TO H.R. 1728, AS REPORTED
OFFERED BY MR. ELLISON OF MINNESOTA**

Insert after section 106 the following new section:

1 **SEC. 107. FIDUCIARY DUTIES OF MORTGAGE BROKERS.**

2 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
3 is amended by inserting after section 129G (as added by
4 section 504) the following new section:

5 **“SEC. 129H. FIDUCIARY DUTIES OF MORTGAGE BROKERS.**

6 **“(a) DUTIES.—**

7 **“(1) IN GENERAL.—**Any mortgage broker act-
8 ing to obtain or arrange for any consumer credit
9 transaction secured by the consumer’s principal
10 dwelling, in addition to any other duties imposed by
11 State or Federal law, including any applicable com-
12 mon law, shall owe a duty to the borrower to comply
13 with the following duties:

14 **“(A)** Mortgage brokers shall act in the
15 consumer’s best interest and in the utmost good
16 faith toward each consumer and shall not com-
17 promise a consumer’s right or interest in favor
18 of another’s right or interest, including a right
19 or interest of the mortgage broker.

1 “(B) A mortgage broker shall not accept,
2 give, or charge any undisclosed compensation or
3 realize any undisclosed remuneration, either
4 through direct or indirect means, that inures to
5 the benefit of the mortgage broker on an ex-
6 penditure made for the consumer.

7 “(C) Mortgage brokers shall carry out all
8 lawful instructions given by the consumer.

9 “(D) Mortgage brokers shall disclose to
10 consumers all material facts of which the mort-
11 gage broker has knowledge which might reason-
12 ably affect the consumer’s rights, interests, or
13 ability to receive the consumer’s intended ben-
14 efit from the consumer credit transaction, but
15 not facts which are reasonably susceptible to
16 the knowledge of the consumer.

17 “(E) Mortgage brokers shall use reason-
18 able care in performing duties.

19 “(F) Mortgage brokers shall account to a
20 consumer for all the consumer’s money and
21 property received as agent.

22 “(2) SCOPE.—The duties of the mortgage
23 broker to the consumer apply when the mortgage
24 broker is acting in the capacity of mortgage broker
25 providing mortgage brokerage services with respect

1 to any consumer credit transaction secured by the
2 consumer's principal dwelling for which the broker is
3 not the creditor.

4 "(3) RULES OF CONSTRUCTION.—

5 "(A) FEES FOR SERVICES RENDERED.—

6 No provision of this subsection shall be con-
7 strued as prohibiting a mortgage broker from
8 contracting for or collecting a fee for services
9 actually rendered to the extent the fee has been
10 disclosed to the consumer in advance of the pro-
11 vision of such services.

12 "(B) DUTY OF BROKER.—Except as re-
13 quired by this title, no provision of this sub-
14 section shall be construed as requiring a mort-
15 gage broker—

16 "(i) to obtain or arrange for any con-
17 sumer credit transaction secured by the
18 consumer's principal dwelling on behalf of
19 a consumer that contains terms or condi-
20 tions not available to the mortgage broker
21 in the mortgage broker's usual course of
22 business; or

23 "(ii) to obtain or arrange for any con-
24 sumer credit transaction secured by the
25 consumer's principal dwelling from a cred-

1 itor with whom the mortgage broker does
2 not have a business relationship.

3 “(b) MORTGAGE BROKER DEFINED.—For purposes
4 of this section, the term ‘mortgage broker’ means any per-
5 son who is defined as a mortgage broker under applicable
6 State law.”.

