

HOUSE BILL No. 4596

April 12, 2007, Introduced by Rep. Jackson and referred to the Committee on Banking and Financial Services.

A bill to amend 1987 PA 173, entitled "Mortgage brokers, lenders, and servicers licensing act," by amending the title and sections 1a, 2, 3, 4, 5, 6, 8, 9, 11, 21, 23, 25, 27, and 29 (MCL 445.1651a, 445.1652, 445.1653, 445.1654, 445.1655, 445.1656, 445.1658, 445.1659, 445.1661, 445.1671, 445.1673, 445.1675, 445.1677, and 445.1679), sections 1a and 11 as amended by 2002 PA 391, section 2 as amended by 2005 PA 113, sections 3, 4, 5, 6, 8, 23, and 29 as amended by 1996 PA 210, section 21 as amended by 1992 PA 206, and section 25 as amended by 1998 PA 371, and by adding sections 5a, 5b, 6a, 7a, and 29a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to define and regulate mortgage brokers, mortgage lenders, **MORTGAGE LOAN OFFICERS**, and mortgage servicers; to prescribe the powers and duties of the ~~financial institutions bureau~~ **OFFICE OF FINANCIAL AND INSURANCE SERVICES** and certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties.

Sec. 1a. As used in this act, unless the context requires otherwise:

(a) "Affiliate" means a person or group of persons that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with another person and engaged in a business or transaction regulated by this act.

(b) "Commissioner" means the commissioner of the ~~office of financial and insurance services of the department of consumer and industry services~~ or his or her authorized agent.

(c) "Construction loan" means a mortgage loan for the purpose of constructing a 1-to-4 family dwelling, which loan is approved and closed before completion of the construction of the improvement on the real property.

(d) "Control person" means a director or executive officer of a licensee or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or registrant.

(E) "DEPARTMENT" MEANS THE OFFICE OF FINANCIAL AND INSURANCE SERVICES OF THE DEPARTMENT OF LABOR AND ECONOMIC GROWTH.

(F) ~~(e)~~ "Depository financial institution" means a state or

1 nationally chartered bank, a state or federally chartered savings
 2 and loan association, savings bank, or credit union, or an entity
 3 of the federally chartered farm credit system.

4 (G) ~~(f)~~ "Executive officer" means an officer, member, or
 5 partner of a licensee or registrant, including chief executive
 6 officer, president, vice president, chief financial officer,
 7 controller, compliance officer, or any other similar position.

8 (H) ~~(g)~~ "Financial licensing act" means the consumer financial
 9 services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the
 10 acts listed in section 2 of the consumer financial services act,
 11 1988 PA 161, MCL 487.2052.

12 (I) ~~(h)~~ "Firm commitment" means an underwriting in which a
 13 broker-dealer commits to buy the mortgage loan or the entire issue
 14 of securities based upon or backed by 1 or more mortgage loans and
 15 assumes all financial responsibility for any unsold securities.

16 (J) ~~(i)~~ "Individual investor" means a person residing in this
 17 state or having its principal place of business in this state,
 18 other than a bank, savings bank, savings and loan association,
 19 credit union, trust company, insurance company, investment company
 20 as defined in the investment company act of 1940, ~~title I of~~
 21 ~~chapter 686, 54 Stat. 789, 15 U.S.C. USC 80a-1 to 80a-3 and 80a-4~~
 22 ~~to 80a-64~~, pension or profit sharing plan, the assets of which are
 23 managed by a bank or trust company or other institutional manager,
 24 financial institution, institutional manager, broker-dealer that is
 25 a member of the New York stock exchange or registered under the
 26 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, the
 27 federal national mortgage association, the government national

1 mortgage association, the federal home loan mortgage corporation,
2 or a mortgage lender or mortgage servicer.

3 (K) ~~(j)~~—"License" means a license issued under this act.

4 (L) ~~(k)~~—"Licensee" means a person licensed or required to be
5 licensed under this act.

6 (M) ~~(l)~~—"Mortgage broker" means a person **WHO IS NOT A MORTGAGE**
7 **LOAN OFFICER AND** who ~~—~~directly or indirectly ~~—~~does 1 or both of
8 the following:

9 (i) Serves or offers to serve as an agent for a person in an
10 attempt to obtain a mortgage loan.

11 (ii) Serves or offers to serve as an agent for a person who
12 makes or offers to make mortgage loans.

13 (N) ~~(m)~~—"Mortgage lender" means a person **WHO IS NOT A MORTGAGE**
14 **LOAN OFFICER AND** who ~~—~~directly or indirectly ~~—~~makes or offers to
15 make mortgage loans.

16 (O) ~~(n)~~—"Mortgage loan" means a loan secured by a first
17 mortgage on real property located in this state and used, or
18 improved to be used, as a dwelling and designed for occupancy by 4
19 or fewer families or a land contract covering real property located
20 in this state used, or improved to be used, as a dwelling and
21 designed for occupancy by 4 or fewer families. A mortgage loan does
22 not include a home improvement installment contract under the home
23 improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

24 (P) **"MORTGAGE LOAN OFFICER" MEANS AN INDIVIDUAL WHO DIRECTLY**
25 **OR INDIRECTLY MAKES OR OFFERS TO MAKE MORTGAGE LOANS, SERVES OR**
26 **OFFERS TO SERVE AS AN AGENT OF A PERSON IN AN ATTEMPT TO OBTAIN A**
27 **MORTGAGE LOAN, OR SERVES OR OFFERS TO SERVE AS AN AGENT FOR A**

1 PERSON WHO MAKES OR OFFERS TO MAKE MORTGAGE LOANS, AND MEETS 1 OF
2 THE FOLLOWING:

3 (i) IS AN EMPLOYEE OF ONLY 1 MORTGAGE BROKER OR MORTGAGE
4 LENDER.

5 (ii) IS AN EMPLOYEE OF A PROFESSIONAL EMPLOYER ORGANIZATION AND
6 IS ACTING AS A MORTGAGE LOAN OFFICER FOR ONLY A MORTGAGE BROKER OR
7 MORTGAGE LENDER PURSUANT TO A CONTRACT BETWEEN THE PROFESSIONAL
8 EMPLOYER ORGANIZATION AND THE MORTGAGE BROKER OR LENDER.

9 (Q) ~~(e)~~ "Mortgage servicer" means a person who ~~—~~directly or
10 indirectly ~~—~~services or offers to service mortgage loans.

11 (R) ~~(p)~~ "Person" means an individual, corporation, **LIMITED**
12 **LIABILITY COMPANY**, partnership, association, governmental entity,
13 or any other legal entity.

14 (S) "PROFESSIONAL EMPLOYER ORGANIZATION" MEANS THAT TERM AS
15 DEFINED IN SECTION 4 OF THE SINGLE BUSINESS TAX ACT, 1975 PA 228,
16 MCL 208.4.

17 (T) ~~(q)~~ "Real estate broker" means a broker or associate
18 broker licensed under article 25 of the occupational code, 1980 PA
19 299, MCL 339.2501 to 339.2518.

20 (U) ~~(r)~~ "Real estate salesperson" means a salesperson licensed
21 under article 25 of the occupational code, 1980 PA 299, MCL
22 339.2501 to 339.2518.

23 (V) ~~(s)~~ "Register" means filing a notice with the commissioner
24 on a form prescribed by the commissioner that notifies the
25 commissioner of the intent to engage in the activities of a
26 mortgage broker, mortgage lender, or mortgage servicer in this
27 state and the payment of any fees required under this act, along

1 with the other documents, proofs, and fees required by the
2 commissioner.

3 (W) ~~(t)~~—"Registrant" means a person registered or required to
4 be registered under this act.

5 (X) ~~(u)~~—"Service" means the collection or remittance, or the
6 right or obligation to collect or remit, for a lender, noteowner,
7 noteholder, mortgage servicer, or the licensee's or registrant's
8 own account of 4 or more installment payments of the principal,
9 interest, or an amount placed in escrow under a mortgage loan,
10 mortgage servicing agreement, or an agreement with the mortgagor.

11 Sec. 2. (1) A person shall not act as a mortgage broker,
12 mortgage lender, **MORTGAGE LOAN OFFICER**, or mortgage servicer
13 without first obtaining a license or registering under this act,
14 unless 1 or more of the following apply:

15 (a) The person is solely performing services as an employee of
16 only 1 mortgage broker, mortgage lender, or mortgage servicer **AND**
17 **IS NOT A MORTGAGE LOAN OFFICER.**

18 (b) The person is exempted from the act under section 25.

19 (c) The person is licensed as a class I licensee under the
20 consumer financial services act, 1988 PA 161, MCL 487.2051 to
21 487.2072.

22 ~~—— (d) The individual is an employee of a professional employer~~
23 ~~organization, as that term is defined in section 4 of the single~~
24 ~~business tax act, 1975 PA 228, MCL 208.4, solely acting as a~~
25 ~~residential mortgage originator of only 1 mortgage broker or~~
26 ~~mortgage lender. The mortgage broker or mortgage lender shall do~~
27 ~~all of the following:~~

1 ~~—— (i) Direct and control the activities of the individual under~~
2 ~~this act.~~

3 ~~—— (ii) Be responsible for all activities of the individual and~~
4 ~~assume responsibility for the individual's actions that are covered~~
5 ~~by the proof of financial responsibility deposit required under~~
6 ~~section 4.~~

7 (2) A person that is licensed to make regulatory loans under
8 the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, or is
9 licensed to make secondary mortgage loans under the secondary
10 mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and is
11 registered with the commissioner shall file with the commissioner
12 an application for a license under section 3(1) or shall
13 discontinue all activities that are subject to this act.

14 (3) Unless a residential mortgage originator is otherwise
15 licensed or registered under this act, a residential mortgage
16 originator shall not receive directly or indirectly any
17 compensation, commission, fee, points, or other remuneration or
18 benefits from a mortgage broker, mortgage lender, or mortgage
19 servicer other than the employer of the residential mortgage
20 originator.

21 (4) Unless a residential mortgage originator is otherwise
22 licensed or registered under this act, a mortgage broker, mortgage
23 lender, or mortgage servicer shall not pay directly or indirectly
24 any compensation, commission, fee, points, or other remuneration or
25 benefits to a residential mortgage originator other than an
26 employee of the mortgage broker, mortgage lender, or mortgage
27 servicer. As used in this subsection and subsection (3),

1 "residential mortgage originator" means a person who assists
2 another person in obtaining a mortgage loan.

3 (5) A mortgage broker, mortgage lender, or mortgage servicer
4 that was exempt from regulation under this act and is a subsidiary
5 or affiliate of a depository financial institution or a depository
6 financial institution holding company that does not maintain a main
7 office or branch office in this state, shall register under section
8 6 or shall discontinue all activities subject to this act.

9 (6) Except for a state or nationally chartered bank, savings
10 bank, or an affiliate of a bank or savings bank, the person subject
11 to this act shall not include in its name or assumed name, the
12 words "bank", "banker", "banking", "banc", "bankcorp", "bancorp",
13 or any other words or phrases that would imply that the person is a
14 bank, is engaged in the business of banking, or is affiliated with
15 a bank or savings bank. It is not a violation of this subsection
16 for a licensee or registrant to use the term "mortgage banker" or
17 "mortgage banking" in its name or assumed name. A person subject to
18 this act whose name or assumed name on January 1, 1995 contained a
19 word prohibited by this section may continue to use the name or
20 assumed name.

21 Sec. 3. (1) An application for, or renewal of, a license shall
22 be made in writing to the commissioner on a form prescribed by the
23 commissioner. If the commissioner determines after investigation
24 that the experience, character, business reputation, and general
25 fitness of the applicant and its officers, directors, shareholders,
26 partners, and affiliates command the confidence of the public and
27 warrant the belief that the applicant and its officers, directors,

shareholders, partners, and affiliates will comply with the law and that grounds for revoking, suspending, or denying a license under this act do not exist, the commissioner shall issue a license to, or renew the license of, the applicant to act as a mortgage broker, mortgage lender, **MORTGAGE LOAN OFFICER**, or mortgage servicer.

(2) A license issued under this section does not approve the use of or indemnify the licensee against claims for the improper use of the business name stated in the license.

(3) THIS SECTION DOES NOT APPLY TO A MORTGAGE LOAN OFFICER LICENSE OR AN APPLICATION FOR A MORTGAGE LOAN OFFICER LICENSE OR RENEWAL OF THAT LICENSE.

Sec. 4. (1) Except as otherwise provided in this section, at the time of filing an application for a license or renewal of a license, the applicant shall do all of the following:

(a) Provide proof of financial responsibility in the following amounts:

(i) ~~\$25,000.00 for~~ **FOR** an applicant who acts as a mortgage broker and who receives funds from a prospective borrower before the closing of the mortgage loan, ~~or~~ **\$25,000.00.**

(ii) **FOR AN APPLICANT** who acts as a mortgage lender, **\$25,000.00.**

(iii) ~~(ii) \$125,000.00 for~~ **FOR** an applicant who acts as a mortgage servicer, **\$125,000.00.**

(b) Provide proof of financial responsibility by 1 of the following:

(i) A corporate surety bond payable to the commissioner, executed by a corporate surety approved by the commissioner, which

1 expires no earlier than the date the license shall expire.

2 (ii) An irrevocable letter of credit upon which the applicant
3 is the obligor, which expires no earlier than the date the license
4 shall expire, issued by a bank, savings bank, savings and loan
5 association, or credit union the deposits of which are insured by
6 an agency of the federal government, and the terms of which letter
7 of credit are approved by the commissioner.

8 (2) The bond or letter of credit deposited under subsection
9 (1) shall be conditioned upon the conduct of the business in
10 accordance with the provisions of this act and all rules
11 promulgated by the commissioner, and the payment of all money that
12 becomes due.

13 (3) In place of depositing a bond or letter of credit, an
14 applicant may pay a nonrefundable administrative fee established by
15 the commissioner not to exceed \$100.00 and furnish 1 of the
16 following as proof of financial responsibility:

17 (a) Deposit with the state treasurer, under terms prescribed
18 by the commissioner, obligations of the United States, or
19 obligations which are guaranteed fully as to principal and interest
20 by the United States, or any general obligations of any state or
21 any political subdivision of the United States, with a maturity
22 date of 3 years or less, in an amount equal to, or greater than,
23 the amount of the required bond. Interest earned under obligations
24 shall accrue to the account of the applicant.

25 (b) Deposit with the state treasurer, under terms prescribed
26 by the commissioner, a certificate of deposit of a federally
27 insured financial institution with a maturity date of 3 years or

1 less for an amount payable which is equal to, or greater than, the
 2 amount of the required bond and which is not available for
 3 withdrawal except by direct order of the commissioner. Interest
 4 earned under the certificate shall accrue to the account of the
 5 applicant.

6 (4) Upon application as prescribed by the commissioner, the
 7 commissioner may reduce, waive, or modify the requirements under
 8 this section for a mortgage servicer who services not more than 300
 9 mortgage loans and who does not collect money for the purpose of
 10 paying taxes or insurance pursuant to the mortgage loan.

11 (5) The commissioner shall waive the requirements of this
 12 section and section 5 upon application by a mortgage servicer who
 13 is a licensed real estate broker or real estate salesperson,
 14 services more than 75 land contracts, has a satisfactory record of
 15 compliance with applicable state and federal law, and does not
 16 engage in any other activity regulated by this act.

17 (6) **THIS SECTION DOES NOT APPLY TO AN APPLICANT APPLYING FOR A**
 18 **MORTGAGE LOAN OFFICER LICENSE OR RENEWAL OF THAT LICENSE.**

19 Sec. 5. (1) A licensee ~~who acts as~~ **DESCRIBED IN THIS**
 20 **SUBSECTION MUST MAINTAIN A NET WORTH THAT MEETS 1 OF THE FOLLOWING,**
 21 **AS APPLICABLE:**

22 (A) **IF THE LICENSEE IS** a mortgage broker and ~~who receives~~
 23 funds from a prospective borrower before the closing of the
 24 mortgage loan, ~~shall maintain a net worth of not less than~~
 25 \$25,000.00. ~~A licensee who acts as~~

26 (B) **IF A LICENSEE IS** a mortgage lender, ~~shall maintain a net~~
 27 worth of not less than \$25,000.00. ~~A licensee who acts as~~

1 (C) IF A LICENSEE IS a mortgage servicer, ~~shall maintain a net~~
2 worth in an amount determined by the commissioner not exceeding
3 \$100,000.00. ~~Net~~

4 (2) FOR PURPOSES OF THIS SECTION, NET worth ~~shall be~~ IS
5 determined at the conclusion of the fiscal year of the licensee
6 immediately preceding the date an application for a license ~~—or A~~
7 renewal of a license ~~—is~~ submitted to the commissioner. ~~Net worth~~
8 ~~shall be disclosed~~

9 (3) A LICENSEE SHALL DISCLOSE HIS OR HER NET WORTH on a form
10 prescribed by the commissioner or on a form prepared or reviewed by
11 a certified public accountant. ~~and~~

12 (4) FOR PURPOSES OF THIS SECTION, NET WORTH shall be computed
13 in accordance with generally accepted accounting principles ~~—The~~
14 AND THE following assets shall be excluded in the computation of
15 net worth:

16 (a) That portion of an applicant's assets pledged to secure
17 obligations of any person other than that of the applicant.

18 (b) Any asset, except A construction loans receivable, **THAT IS**
19 secured by first mortgages from related companies ~~—AND IS~~ due from
20 officers or stockholders of the applicant or persons in which the
21 applicant's officers or stockholders have an interest.

22 (c) An amount in excess of the lower of the cost or market
23 value of mortgage loans in foreclosure, or real property acquired
24 through foreclosure.

25 (d) An investment shown on the balance sheet in joint
26 ventures, subsidiaries, or affiliates, ~~which~~ **THAT** is greater than
27 the market value of the assets.

1 (e) Good will or value placed on insurance renewals or
2 property management contract renewals or other similar intangible
3 value.

4 (f) Organization costs.

5 SEC. 5A. (1) BEFORE RECEIVING A MORTGAGE LOAN OFFICER LICENSE,
6 AN APPLICANT MUST SUBMIT AN APPLICATION AS PRESCRIBED BY THE
7 COMMISSIONER AND MUST SUCCESSFULLY COMPLETE AT LEAST 24 CLOCK HOURS
8 OF LIVE APPROVED CLASSROOM COURSES THAT INCLUDE AT LEAST ALL OF THE
9 FOLLOWING:

10 (A) FOUR HOURS OF INSTRUCTION CONCERNING STATE AND FEDERAL
11 MORTGAGE LENDING LAWS, INCLUDING AT LEAST 2 HOURS ON THIS ACT.

12 (B) FOUR HOURS OF INSTRUCTION CONCERNING APPRAISAL OF REAL
13 PROPERTY.

14 (C) FOUR HOURS OF INSTRUCTION CONCERNING THE MORTGAGE LOAN
15 APPLICATION PROCESS.

16 (D) TWO HOURS OF INSTRUCTION CONCERNING THE MORTGAGE LOAN
17 UNDERWRITING PROCESS.

18 (E) TWO HOURS OF INSTRUCTION CONCERNING TAX LAWS AFFECTING
19 MORTGAGES.

20 (F) FOUR HOURS OF INSTRUCTION CONCERNING THE MORTGAGE LOAN
21 CLOSING PROCESS.

22 (G) TWO HOURS OF INSTRUCTION COVERING BASIC MORTGAGE FINANCING
23 CONCEPTS AND TERMS.

24 (H) TWO HOURS OF INSTRUCTION CONCERNING THE ETHICAL
25 RESPONSIBILITIES OF A LICENSEE, INCLUDING, BUT NOT LIMITED TO,
26 CONFIDENTIALITY, CONSUMER COUNSELING, AND THE DUTIES AND
27 OBLIGATIONS OF A LICENSEE CREATED IN THE CONSUMER MORTGAGE

1 PROTECTION ACT, 2002 PA 660, MCL 445.1631 TO 445.1645.

2 (2) BEFORE BEING PERMITTED TO RENEW A MORTGAGE LOAN OFFICER
3 LICENSE, A LICENSEE MUST WITHIN THE 12-MONTH PERIOD PRECEDING THE
4 APPLICATION HAVE SUCCESSFULLY COMPLETED AT LEAST 6 CLOCK HOURS OF
5 CONTINUING EDUCATION APPROVED BY THE DEPARTMENT INVOLVING ANY
6 TOPICS RELEVANT TO THE MANAGEMENT, OPERATION, AND PRACTICE OF
7 MORTGAGE BROKERS AND MORTGAGE LENDERS AND COVERING CHANGES IN
8 ECONOMIC CONDITIONS, LAW, RULES, COURT CASES, AND INTERPRETATIONS,
9 OR ANY COMBINATION OF THOSE CHANGES, RELATING TO MORTGAGES THAT ARE
10 PERTINENT TO THE ACTIVITIES OF A MORTGAGE LOAN OFFICER.

11 (3) THE DEPARTMENT MAY REISSUE A MORTGAGE LOAN OFFICER LICENSE
12 WITHOUT EXAMINATION TO A LICENSEE WHOSE LICENSE HAS LAPSED FOR LESS
13 THAN 3 YEARS IF THE LICENSEE SHOWS PROOF OF COMPLETION OF AT LEAST
14 6 CLOCK HOURS OF CONTINUING EDUCATION FOR EACH YEAR THE LICENSE WAS
15 LAPSED ON TOPICS DESCRIBED IN SUBSECTION (2).

16 (4) THE DEPARTMENT MAY REISSUE A MORTGAGE LOAN OFFICER LICENSE
17 TO A LICENSEE WHOSE LICENSE HAS LAPSED FOR 3 OR MORE CONTINUOUS
18 YEARS IF THE LICENSEE PROVIDES PROOF OF THE SUCCESSFUL COMPLETION
19 OF 1 OF THE FOLLOWING:

20 (A) SIX CLOCK HOURS OF CONTINUING EDUCATION FOR EACH OF THE
21 YEARS THE LICENSE WAS LAPSED ON TOPICS DESCRIBED IN SUBSECTION (2).

22 (B) TWENTY-FOUR CLOCK HOURS OF INSTRUCTION DESCRIBED IN
23 SUBSECTION (1).

24 (C) PASSING THE EXAMINATION REQUIRED FOR LICENSURE UNDER
25 SECTION 5B.

26 (5) THE DEPARTMENT SHALL NOT APPLY THE COURSE CREDITS USED TO
27 MEET CONTINUING EDUCATION REQUIREMENTS PROVIDED IN SUBSECTIONS (2)

1 THROUGH (4) TOWARD THE MORTGAGE LOAN OFFICER LICENSE EDUCATION
2 REQUIREMENTS PROVIDED IN SUBSECTION (1) AND SHALL NOT APPLY COURSE
3 CREDITS TAKEN UNDER THE MORTGAGE LOAN OFFICER LICENSE EDUCATION
4 REQUIREMENTS TOWARD THE CONTINUING EDUCATION REQUIREMENTS. THE
5 DEPARTMENT SHALL APPORTION THE APPROVED COURSE CREDITS ELIGIBLE FOR
6 EDUCATION REQUIREMENTS IN SUBSECTION (1) AND SUBSECTIONS (2)
7 THROUGH (4) TO MEET EITHER REQUIREMENT IF REQUESTED BY THE
8 LICENSEE.

9 (6) A PERSON WHO OFFERS OR CONDUCTS A COURSE OR COURSES OF
10 STUDY REPRESENTED TO MEET THE EDUCATIONAL REQUIREMENTS OF THIS
11 SECTION MUST FIRST OBTAIN APPROVAL FROM THE DEPARTMENT AND SHALL
12 COMPLY WITH THE RULES OF THE DEPARTMENT CONCERNING CURRICULUM,
13 INSTRUCTOR QUALIFICATION, GRADING SYSTEM, AND OTHER RELATED
14 MATTERS. IN ADDITION TO OTHER REQUIREMENTS IMPOSED UNDER RULE, IN
15 ORDER TO RECEIVE APPROVAL A COURSE SHALL BE DESIGNED TO BE TAUGHT
16 FOR NOT LESS THAN 1 CLOCK HOUR, NOT INCLUDING TIME SPENT ON BREAKS,
17 MEALS, OR OTHER UNRELATED ACTIVITIES, PROVIDED THE COURSE IS ONLY
18 APPROVED FOR LESS THAN 2 CLOCK HOURS IF, BASED UPON THE SUBJECT
19 MATTER, COURSE OUTLINE, INSTRUCTIONAL MATERIALS, METHODOLOGY, AND
20 OTHER CONSIDERATIONS CONSISTENT WITH RULES OF THE DEPARTMENT, THE
21 DEPARTMENT DETERMINES THAT THE COURSE OBJECTIVES CAN BE EFFECTIVELY
22 MET IN THE PROPOSED TIME PERIOD. THE DEPARTMENT MAY SUSPEND OR
23 REVOKE THE APPROVAL OF A PERSON FOR A VIOLATION OF THIS SECTION OR
24 OF THE RULES PROMULGATED UNDER THIS SECTION. A PERSON OFFERING OR
25 CONDUCTING A COURSE SHALL NOT REPRESENT THAT ITS STUDENTS ARE
26 ASSURED OF PASSING AN EXAMINATION REQUIRED BY THE DEPARTMENT. A
27 PERSON SHALL NOT REPRESENT THAT THE ISSUANCE OF DEPARTMENTAL

1 APPROVAL IS A RECOMMENDATION OR ENDORSEMENT OF THE PERSON TO WHICH
2 IT IS ISSUED OR OF A COURSE OF INSTRUCTION GIVEN BY IT. A
3 PRELICENSURE COURSE APPROVED UNDER THIS SECTION SHALL BE CONDUCTED
4 BY A LOCAL PUBLIC SCHOOL DISTRICT, A COMMUNITY COLLEGE, AN
5 INSTITUTION OF HIGHER EDUCATION AUTHORIZED TO GRANT DEGREES, OR A
6 PROPRIETARY SCHOOL LICENSED BY THE DEPARTMENT OF CAREER DEVELOPMENT
7 UNDER 1943 PA 148, MCL 395.101 TO 395.103.

8 (7) A PERSON THAT VIOLATES SUBSECTION (6) IN OFFERING COURSES
9 IS SUBJECT TO THE PENALTIES SET FORTH IN SECTION 29.

10 (8) THE DEPARTMENT MAY CONDUCT, HOLD, OR ASSIST IN CONDUCTING
11 OR HOLDING MORTGAGE LAW CLINICS, MEETINGS, COURSES, OR INSTITUTES,
12 THAT ARE OPEN TO ANY INDIVIDUAL LICENSED AS A MORTGAGE LOAN
13 OFFICER, AND MAY INCUR THE NECESSARY EXPENSES IN CONNECTION WITH A
14 CLINIC, MEETING, COURSE, OR INSTITUTE. THE DEPARTMENT IN THE PUBLIC
15 INTEREST MAY ASSIST EDUCATIONAL INSTITUTIONS IN THIS STATE IN
16 SPONSORING STUDIES, RESEARCH, AND PROGRAMS FOR THE PURPOSE OF
17 RAISING THE STANDARDS OF PROFESSIONAL PRACTICE IN MORTGAGE LENDING
18 AND BROKERING AND THE COMPETENCE OF MORTGAGE LOAN OFFICERS.

19 SEC. 5B. (1) AN APPLICANT FOR A MORTGAGE LOAN OFFICER LICENSE
20 MUST FILE AN APPLICATION WITH THE COMMISSIONER THAT MEETS ALL OF
21 THE FOLLOWING:

22 (A) IS IN WRITING, ON A FORM PRESCRIBED BY THE COMMISSIONER.

23 (B) INCLUDES THE APPLICANT'S PRESENT RESIDENTIAL ADDRESS, AND
24 THE COMPLETE ADDRESS OF EACH PLACE WHERE THE APPLICANT HAS RESIDED
25 FOR A PERIOD OF 60 DAYS OR MORE IN THE 5-YEAR PERIOD PRECEDING THE
26 DATE OF APPLICATION.

27 (C) THE NAME AND BUSINESS ADDRESS OF THE MORTGAGE BROKER OR

1 MORTGAGE LENDER THAT IS EMPLOYING OR ENGAGING THE APPLICANT TO ACT
2 AS A MORTGAGE LOAN OFFICER, AND THE NAME AND BUSINESS ADDRESS OF
3 EACH MORTGAGE BROKER, MORTGAGE LENDER, OR OTHER PERSON THAT HAS
4 EMPLOYED OR ENGAGED THE APPLICANT AS A MORTGAGE LOAN OFFICER IN THE
5 5-YEAR PERIOD PRECEDING THE DATE OF APPLICATION.

6 (D) IF THE MORTGAGE LOAN OFFICER IS AN EMPLOYEE OF A
7 PROFESSIONAL EMPLOYER ORGANIZATION, THE NAME AND BUSINESS ADDRESS
8 OF THE PROFESSIONAL EMPLOYER ORGANIZATION.

9 (E) IS SIGNED BY THE APPLICANT, BY AN AUTHORIZED
10 REPRESENTATIVE OF THE MORTGAGE BROKER OR LENDER THAT IS EMPLOYING
11 OR ENGAGING THE APPLICANT, AND IF THE MORTGAGE LOAN OFFICER IS AN
12 EMPLOYEE OF A PROFESSIONAL EMPLOYER ORGANIZATION, BY AN AUTHORIZED
13 REPRESENTATIVE OF THE PROFESSIONAL EMPLOYER ORGANIZATION.

14 (2) THE DEPARTMENT SHALL NOT ISSUE A MORTGAGE LOAN OFFICER
15 LICENSE TO A NEW APPLICANT WHO HAS BEEN CONVICTED OF EMBEZZLEMENT
16 OR MISAPPROPRIATION OF FUNDS.

17 (3) THE DEPARTMENT MAY REQUIRE AND PROCURE SATISFACTORY PROOF
18 OF THE BUSINESS EXPERIENCE, COMPETENCE, AND GOOD MORAL CHARACTER OF
19 AN APPLICANT FOR A MORTGAGE LOAN OFFICER LICENSE BEFORE ISSUING A
20 LICENSE TO HIM OR HER.

21 (4) THE DEPARTMENT SHALL REQUIRE AN APPLICANT FOR A MORTGAGE
22 LOAN OFFICER LICENSE TO PASS AN EXAMINATION DEVELOPED BY THE
23 DEPARTMENT OR CONTRACTED FOR WITH A RECOGNIZED OUTSIDE TESTING
24 AGENCY ESTABLISHING, IN A MANNER SATISFACTORY TO THE DEPARTMENT,
25 THAT THE APPLICANT HAS A FAIR KNOWLEDGE OF THE ENGLISH LANGUAGE,
26 INCLUDING READING, WRITING, SPELLING, AND ELEMENTARY ARITHMETIC; A
27 SATISFACTORY UNDERSTANDING OF THE FUNDAMENTALS OF MORTGAGE LENDING

1 AND BROKERING PRACTICE AND OF THE LAWS AND PRINCIPLES OF MORTGAGES;
2 THE OBLIGATIONS OF A MORTGAGE LOAN OFFICER TO A MORTGAGE BROKER OR
3 LENDER; THE OBLIGATIONS OF MORTGAGE LOAN OFFICERS, MORTGAGE
4 BROKERS, AND MORTGAGE LENDERS TO THE PUBLIC; AND THE LAW DEFINING,
5 REGULATING, AND LICENSING MORTGAGE LOAN OFFICERS. THE DEPARTMENT
6 MAY REQUIRE WRITTEN EXAMINATION OR WRITTEN REEXAMINATION OF A
7 MORTGAGE LOAN OFFICER AND REQUIRE A PASSING SCORE SATISFACTORY TO
8 THE DEPARTMENT AS A CONDITION PRECEDENT TO REISSUING A LICENSE TO A
9 MORTGAGE LOAN OFFICER.

10 (5) THE DEPARTMENT SHALL REQUIRE PROOF THAT AN APPLICANT FOR A
11 MORTGAGE LOAN OFFICER LICENSE HAS THE EQUIVALENT OF 3 YEARS OF
12 FULL-TIME EXPERIENCE IN THE BUSINESS OF MORTGAGE LENDING OR
13 BROKERING OR IN A FIELD THAT IS DETERMINED BY THE DEPARTMENT TO BE
14 RELEVANT AND RELATED TO THE BUSINESS OF MORTGAGE LENDING OR
15 BROKERING BEFORE ISSUING A LICENSE.

16 Sec. 6. (1) The following shall register with the commissioner
17 on a form prescribed by the commissioner:

18 (a) A mortgage broker, mortgage lender, or mortgage servicer
19 approved as a seller or servicer by the federal national mortgage
20 association or the federal home loan mortgage corporation.

21 (b) A mortgage broker, mortgage lender, or mortgage servicer
22 approved as an issuer or servicer by the government national
23 mortgage association.

24 (c) A real estate broker or real estate salesperson licensed
25 under article 25 of the occupational code, ~~Act No. 299 of the~~
26 ~~Public Acts of 1980, being sections 339.2501 to 339.2518 of the~~
27 ~~Michigan Compiled Laws 1980 PA 299, MCL 339.2501 TO 339.2518, who~~

1 acts as a mortgage broker for not more than 1 licensee or 1
2 registrant, or who acts as a mortgage broker, mortgage lender, or
3 mortgage servicer only in connection with real estate sales in
4 which the real estate broker or salesperson affiliated with the
5 real estate broker is engaged and who receives for ~~such~~**THOSE**
6 services additional compensation beyond the customary commission on
7 real estate sales.

8 (d) A mortgage broker, mortgage lender, or mortgage servicer
9 ~~which~~**THAT** is a subsidiary or affiliate of a depository financial
10 institution or a depository financial institution holding company
11 if the depository **FINANCIAL** institution **OR DEPOSITORY FINANCIAL**
12 **INSTITUTION HOLDING COMPANY** does not maintain a main office or a
13 branch office in this state.

14 (2) A registrant is not required to comply with section 3, 4,
15 or 5 and is not subject to annual examination by the commissioner.

16 (3) A mortgage broker, mortgage lender, or a mortgage servicer
17 ~~which~~**THAT** is a subsidiary or affiliate of a depository financial
18 institution or a subsidiary or affiliate of a holding company of a
19 depository financial institution ~~shall not be~~**IS NOT** subject to
20 section 29(1)(b) or (c).

21 (4) Notwithstanding section 25(m), a mortgage broker, mortgage
22 lender, or a mortgage servicer ~~which~~**THAT** is a subsidiary or
23 affiliate of a depository financial institution or a subsidiary or
24 affiliate of a holding company of a depository financial
25 institution may register and become subject to the provisions of
26 the act applicable to registrants.

27 (5) If a real estate broker or real estate salesperson acts as

1 a mortgage broker, mortgage lender, **MORTGAGE LOAN OFFICER**, or
2 mortgage servicer not in connection with real estate sales in which
3 the real estate broker or real estate salesperson affiliated with
4 the real estate broker is engaged, the real estate broker or real
5 estate salesperson shall be licensed or registered as otherwise
6 required under this act.

7 (6) A real estate broker or real estate salesperson, in
8 connection with real estate sales in which the real estate broker
9 or real estate salesperson affiliated with the real estate broker
10 is engaged, who acts as a mortgage broker on 10 or fewer mortgage
11 loans in any 12-month period from July 1 to June 30 and who
12 receives for ~~such~~**THOSE** services additional compensation beyond the
13 customary commission on real estate sales ~~shall be~~**IS** exempt from
14 the registration or licensing requirements of this act for that 12-
15 month period. If the broker and all real estate salespersons
16 affiliated with the broker in **THE** aggregate ~~brokered~~**BROKER** more
17 than 30 mortgage loans as described in this subsection in the same
18 12-month period from July 1 to June 30, then ~~such~~**THAT** broker shall
19 obtain a license or shall register as required by this act.

20 (7) A registration accepted by the commissioner under this
21 section does not approve the use of or indemnify the registrant
22 against claims for the improper use of the business name stated in
23 the registration.

24 **SEC. 6A. (1) THE DEPARTMENT SHALL DELIVER THE LICENSE OF A**
25 **MORTGAGE LOAN OFFICER TO THE MORTGAGE BROKER OR MORTGAGE LENDER**
26 **THAT IS EMPLOYING OR ENGAGING THE MORTGAGE LOAN OFFICER.**

27 (2) A MORTGAGE BROKER OR MORTGAGE LENDER SHALL CONSPICUOUSLY

1 DISPLAY THE LICENSE OF EACH MORTGAGE LOAN OFFICER EMPLOYED OR
2 ENGAGED BY THE MORTGAGE BROKER OR MORTGAGE LENDER IN THAT PLACE OF
3 BUSINESS.

4 (3) IF THE DEPARTMENT DETERMINES THAT IT WILL BE UNABLE TO
5 ISSUE A MORTGAGE LOAN OFFICER LICENSE UNDER SUBSECTION (1) WITHIN 2
6 WEEKS AFTER THE DEPARTMENT DETERMINES THAT THE APPLICANT FOR THE
7 LICENSE HAS MET ALL REQUIREMENTS FOR LICENSURE, OR THE DEPARTMENT
8 IS IN FACT UNABLE TO ISSUE THE MORTGAGE LOAN OFFICER LICENSE WITHIN
9 2 WEEKS, THE DEPARTMENT SHALL ISSUE A TEMPORARY LICENSE TO THE
10 APPLICANT WITHOUT PAYMENT OF AN ADDITIONAL FEE AND THE APPLICANT
11 MAY ACT AS A MORTGAGE LOAN OFFICER UNDER THAT TEMPORARY LICENSE
12 UNTIL THE DEPARTMENT ISSUES OR REFUSES TO ISSUE HIS OR HER LICENSE.

13 SEC. 7A. IF A MORTGAGE LOAN OFFICER'S EMPLOYMENT OR ENGAGEMENT
14 WITH A MORTGAGE BROKER OR MORTGAGE LENDER IS TERMINATED, THE
15 MORTGAGE BROKER OR MORTGAGE LENDER SHALL WITHIN 5 DAYS DELIVER OR
16 MAIL BY CERTIFIED MAIL THE MORTGAGE LOAN OFFICER LICENSE TO THE
17 DEPARTMENT. A MORTGAGE LOAN OFFICER SHALL NOT PERFORM AN ACT
18 REGULATED BY THIS ACT EITHER DIRECTLY OR INDIRECTLY UNDER AUTHORITY
19 OF THE LICENSE AFTER THE DATE OF THE DEPARTMENT'S RECEIPT OF THE
20 LICENSE FROM A MORTGAGE BROKER OR MORTGAGE LENDER.

21 Sec. 8. (1) At the time of making an initial application for a
22 license under this act, and at the time of making the first
23 application for a license after the suspension or revocation of a
24 license, ~~the~~AN applicant shall pay to the commissioner a fee for
25 investigating the applicant and the minimum annual operating fee
26 established by the commissioner under subsection (3). To renew a
27 license that has not been suspended or revoked, the applicant shall

1 only pay to the commissioner the annual operating fee. At the time
 2 of filing a registration or a renewal of a registration, a
 3 registrant shall pay to the commissioner an annual operating fee as
 4 provided ~~by~~ **IN** subsection (3).

5 (2) If the initial or renewed license or registration as
 6 provided in subsection (1) would have an effective date within 6
 7 months of the expiration date provided for in section 7, the
 8 initial or renewal annual operating fee for that license or
 9 registration ~~shall be~~ **IS** 1/2 of the annual operating fee.

10 (3) The commissioner shall annually establish the schedule of
 11 fees sufficient to pay, but not to exceed, the ~~bureau's~~
 12 **DEPARTMENT'S** reasonably anticipated costs of administering this
 13 act. The fees ~~are as follows~~ **ESTABLISHED BY THE COMMISSIONER SHALL**
 14 **MEET THE FOLLOWING REQUIREMENTS:**

15 (a) ~~For~~ **EXCEPT AS PROVIDED IN SUBDIVISION (B),** FOR the
 16 investigation of an applicant for a license, not less than \$400.00
 17 or more than \$1,000.00.

18 (B) **FOR THE INVESTIGATION OF AN APPLICANT FOR A LICENSE AS A**
 19 **MORTGAGE LOAN OFFICER, NOT LESS THAN \$400.00 OR MORE THAN**
 20 **\$1,000.00.**

21 (C) ~~(b) Except as set forth in subdivision (c)~~ **SUBDIVISIONS**
 22 **(D) AND (E),** a licensee or registrant annually shall pay an
 23 operating fee based upon the number of closed mortgage loans the
 24 licensee or registrant brokered to other parties, the number of
 25 mortgage loans closed by the licensee or registrant during the
 26 previous calendar year, and the dollar volume of loans serviced by
 27 the licensee or registrant as of December 31 of the previous

1 calendar year. ~~The~~ **BEFORE JULY 2, 1997, THE** operating fee during
 2 ~~the first year after enactment of this amendatory language shall be~~
 3 not less than \$250.00 and not more than \$2,500.00. ~~Thereafter, in~~
 4 ~~the discretion of the commissioner, subject~~ **SUBJECT** to the
 5 limitation set forth in this subsection, the ~~maximum operating fee~~
 6 ~~may be increased~~ **COMMISSIONER IN HIS OR HER DISCRETION MAY INCREASE**
 7 **THE MAXIMUM OPERATING FEE** at an annual rate of not more than 10% ~~in~~
 8 ~~the second, third, and fourth years following enactment, and in the~~
 9 ~~fifth and subsequent years~~ **FOR THE 1-YEAR PERIODS ENDING JULY 1,**
 10 **1998, JULY 1, 1999, AND JULY 1, 2000, AND FOR THE 1-YEAR PERIOD**
 11 **ENDING JULY 1, 2001 AND FOR EACH SUBSEQUENT 1-YEAR PERIOD,** at an
 12 annual rate of not more than the annual increase for the
 13 immediately preceding 12-month period in the Detroit consumer price
 14 index as reported by the United States department of labor. For
 15 purposes of this subdivision, "mortgage loan" includes only
 16 mortgage loans subject to this act.

17 **(D) THE ANNUAL OPERATING FEE FOR A MORTGAGE LOAN OFFICER SHALL**
 18 **NOT BE LESS THAN \$250.00 OR MORE THAN \$2,500.00.**

19 **(E)** ~~(e)~~ For amending or reissuing a license or registration,
 20 not less than \$50.00 or more than \$200.00.

21 **(F)** ~~(d)~~ A licensee or registrant shall pay the actual travel,
 22 lodging, and meal expenses incurred by ~~bureau~~ **DEPARTMENT** employees
 23 who travel out of state to examine the records of the licensee or
 24 investigate the licensee or registrant and the cost of independent
 25 investigators employed under section 20(1)(e).

26 (4) Fees received pursuant to this act are not refundable.

27 (5) If any fees or penalties provided for in this act are not

1 paid when required, the attorney general may maintain an action
2 against the delinquent licensee or registrant for the recovery of
3 the fees or penalties together with interest and costs.

4 (6) A licensee or registrant who fails to submit to the
5 commissioner a report required by section 7 or section 21 is
6 subject to a penalty of \$25.00 for each day the report is
7 delinquent or \$1,000.00, whichever is less.

8 (7) A licensee or registrant whose license or registration
9 renewal fee is not received on or before June 30 is subject to a
10 penalty of \$25.00 for each day the fee is delinquent or \$1,000.00,
11 whichever is less.

12 (8) Money received under this act shall be deposited in the
13 state treasury and credited to the ~~financial institutions bureau~~
14 **DEPARTMENT** to be used only for the operation of the ~~financial~~
15 ~~institutions bureau~~ **DEPARTMENT**.

16 (9) The annual operating fee set by the commissioner under
17 subsection ~~(3)(b)~~ **(3)(C)** shall be based upon information in reports
18 filed under section 21.

19 Sec. 9. **(1) A PERSON SHALL NOT TRANSFER OR ASSIGN A** license
20 ~~shall not be transferred or assigned~~ **ISSUED TO THAT PERSON UNDER**
21 **THIS ACT** without the consent of the commissioner. The sale,
22 transfer, assignment, or conveyance of more than 25% of the
23 outstanding voting stock of a licensee ~~which~~ **THAT** is a corporation,
24 **MORE THAN 25% OF THE MEMBERSHIP INTEREST IN A LICENSEE THAT IS A**
25 **LIMITED LIABILITY COMPANY**, or more than 25% of the interest in a
26 licensee ~~which~~ **THAT** is a partnership or other unincorporated
27 association, ~~shall be~~ **IS** considered to be a transfer of the

1 license.

2 (2) A **PERSON SHALL NOT TRANSFER OR ASSIGN A** registration ~~shall~~
3 ~~not be transferred or assigned~~ **UNDER THIS ACT.**

4 Sec. 11. (1) The commissioner shall exercise general
5 supervision and control over mortgage brokers, mortgage lenders,
6 **MORTGAGE LOAN OFFICERS**, and mortgage servicers doing business in
7 this state.

8 (2) In addition to the other powers granted to the
9 commissioner by this act, the commissioner shall have all of the
10 following powers:

11 (a) To promulgate reasonable rules under the administrative
12 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as
13 necessary to implement and administer this act.

14 (b) To deny an application for a license.

15 (c) To conduct examinations and investigations of any person
16 as necessary for the efficient enforcement of this act and the
17 rules promulgated under this act.

18 (d) To advise the attorney general or the prosecuting attorney
19 of the county in which the business is conducted that the
20 commissioner believes a licensee, registrant, or person is
21 violating this act. The attorney general or prosecuting attorney
22 may take appropriate legal action to enjoin the operation of the
23 business or prosecute violations of this act.

24 (e) To bring an action in the Ingham county circuit court in
25 the name and on behalf of this state against the licensee,
26 registrant, or any other person who is participating in, or about
27 to participate in, any unsafe or injurious practice or act in

1 violation of this act or a rule promulgated under this act, to
 2 enjoin the person from participating in or continuing the practice
 3 or engaging in the act.

4 (f) To order a person to cease and desist from a violation of
 5 this act or a rule promulgated under this act ~~in accordance with~~
 6 **UNDER** section 16.

7 (g) To suspend or revoke a license or registration ~~in~~
 8 ~~accordance with~~ **UNDER** section 29.

9 (h) To require that restitution be made ~~in accordance with~~
 10 **UNDER** section 29.

11 (i) To assess a civil fine ~~in accordance with~~ **UNDER** section
 12 29.

13 (j) To censure a licensee or registrant.

14 (k) To issue an order to prohibit a person from being employed
 15 by, an agent of, or control person of a licensee or registrant ~~as~~
 16 ~~provided under~~ section 18a.

17 Sec. 21. (1) ~~A-EXCEPT AS PROVIDED IN SUBSECTION (4), A~~
 18 licensee or registrant shall maintain books, accounts, records, and
 19 documents of the business, as prescribed by the commissioner,
 20 conducted under the license or registration to enable the
 21 commissioner to determine whether the business of the licensee or
 22 registrant is conducted pursuant to this act and the rules
 23 promulgated under this act. The preservation of records by
 24 reproduction ~~pursuant to~~ **UNDER** the records ~~media~~ **REPRODUCTION** act,
 25 **1992 PA 116, MCL 24.401 TO 24.406**, constitutes compliance with this
 26 section. If the books, accounts, records, and documents are not
 27 made available in this state, the licensee or registrant shall pay

1 the reasonable travel, lodging, and meal expenses of the examiner
2 as provided in section 8.

3 (2) ~~A~~**EXCEPT AS PROVIDED IN SUBSECTION (4)**, A licensee or
4 registrant shall preserve and keep available for examination by the
5 commissioner each mortgage loan document in its possession or
6 control, including, but not limited to, the application, credit
7 report, employment verification, loan disclosure statement, and
8 settlement statement, until the mortgage loan is transferred or
9 assigned, or the expiration of 3 years after the date the mortgage
10 loan is closed, whichever occurs first. If the mortgage loan is
11 transferred or assigned, the licensee or registrant shall preserve
12 and keep available for examination by the commissioner copies of
13 the promissory note, mortgage, land contract, truth-in-lending
14 disclosure statements, and settlement statements in its possession
15 or control for 3 years after the date the mortgage loan is
16 transferred or assigned. Notwithstanding any other provision of
17 this act, each licensee or registrant shall preserve and keep
18 available for examination by the commissioner all documents
19 pertaining to a rejected application for a mortgage loan for the
20 period of time required by state or federal law. A licensee or
21 registrant shall preserve all other books, accounts, records, and
22 documents pertaining to the licensee's or registrant's business and
23 keep them available for examination by the commissioner for not
24 less than 3 years after the conclusion of the fiscal year of the
25 licensee or registrant in which the book, account, record, or
26 document was created.

27 (3) On or before a date to be determined by the commissioner,

1 a licensee or registrant shall annually file with the commissioner
2 a report giving information, as required by the commissioner,
3 concerning the business and operations of the licensee or
4 registrant under this act during the immediately preceding calendar
5 year. In addition, the commissioner may require a licensee or
6 registrant to file special reports as the commissioner considers
7 reasonably necessary for the proper supervision of licensees or
8 registrants under this act. Reports required pursuant to this
9 section shall be in the form prescribed by the commissioner,
10 signed, and affirmed. A person who willfully and knowingly
11 subscribes and affirms a false statement in a report required
12 pursuant to this subsection is guilty of a felony, punishable by
13 imprisonment for not more than 15 years.

14 **(4) FOR A LICENSEE WHO IS A MORTGAGE LOAN OFFICER, THE RECORD-**
15 **KEEPING AND REPORTING OBLIGATIONS DESCRIBED IN THIS SECTION ARE THE**
16 **OBLIGATIONS OF THE MORTGAGE BROKER OR MORTGAGE LENDER ON WHOSE**
17 **BEHALF THE MORTGAGE LOAN OFFICER WAS EMPLOYED OR ENGAGED.**

18 Sec. 23. (1) A licensee or registrant may require a borrower
19 to pay reasonable and necessary charges ~~which~~**THAT** are the actual
20 expenses incurred by the licensee or registrant in connection with
21 the making, closing, disbursing, extending, readjusting, or
22 renewing of a mortgage loan and a loan processing fee. The charges
23 shall be in addition to interest authorized by law, and are not a
24 part of the interest collected or agreed to be paid on the mortgage
25 loan within the meaning of the law of this state which limits the
26 rate of interest which may be exacted in a transaction. The charges
27 shall be paid only once by the borrower to the licensee or

1 registrant. This section is not intended to override the federal
2 preemption of state usury laws contained in the depository
3 institutions deregulation and monetary control act of 1980, Public
4 Law 96-221.

5 (2) A licensee or registrant ~~which~~**THAT** assesses or accepts a
6 fee to guarantee a specified rate of interest on a mortgage loan
7 shall specify the terms and conditions of the guarantee in writing.
8 The terms and conditions of the guarantee shall not extend beyond
9 the expiration of the guarantee unless extended in writing by all
10 the parties.

11 (3) **THIS SECTION DOES NOT APPLY TO A LICENSEE WHO IS A**
12 **MORTGAGE LOAN OFFICER.**

13 Sec. 25. This act does not apply to any of the following:

14 (a) A depository financial institution whether or not the
15 depository financial institution is acting in a capacity of a
16 trustee or fiduciary.

17 (b) A salesperson acting as an agent for a residential builder
18 or residential maintenance and alteration contractor, or a
19 residential builder or residential maintenance and alteration
20 contractor licensed under article 24 of the occupational code, 1980
21 PA 299, MCL 339.2401 to 339.2412, when a mortgage is made or
22 negotiated in connection with the sale or financing of a
23 residential structure or improvement constructed or improved by
24 that residential builder or residential maintenance and alteration
25 contractor.

26 (c) A real estate broker or real estate salesperson who is not
27 a mortgage broker, mortgage lender, **MORTGAGE LOAN OFFICER**, or

1 mortgage servicer, or who only acts as a mortgage broker in
2 connection with a real estate sale or lease and acts without
3 additional compensation beyond the customary commission on the
4 sales or leases.

5 (d) A real estate salesperson who acts for a real estate
6 broker as a mortgage broker, mortgage lender, **MORTGAGE LOAN**
7 **OFFICER**, or mortgage servicer and who receives for the services
8 compensation only from the real estate broker for which the
9 salesperson is an agent or employee.

10 (e) A person licensed under the secondary mortgage loan act,
11 1981 PA 125, MCL 493.51 to 493.81, not making, brokering, or
12 servicing mortgage loans as described in this act in a 12-month
13 period from July 1 to June 30.

14 (f) Agencies or corporate instrumentalities of the United
15 States and of this state and its political subdivisions, including
16 the public employees' retirement system.

17 (g) A mortgage lender that in the aggregate with any
18 affiliates makes 10 or fewer mortgage loans in a 12-month period
19 from July 1 to June 30 **AND ANY MORTGAGE LOAN OFFICER EMPLOYED OR**
20 **ENGAGED BY THAT MORTGAGE LENDER.**

21 (h) A mortgage servicer that in the aggregate with any
22 affiliates services 10 or fewer mortgage loans in a 12-month period
23 from July 1 to June 30.

24 (i) A mortgage servicer that in the aggregate with any
25 affiliates services only 75 or fewer land contracts, of which 10 or
26 fewer require the collection of money for the payment of taxes or
27 insurance. This subdivision and subdivision (h) do not exempt a

1 mortgage servicer who collects money for the payment of taxes or
2 insurance from the provisions of 1966 PA 125, MCL 565.161 to
3 565.164. All fees shall be returned to any mortgage servicer
4 described in this subdivision who applied for a license and paid
5 the fees required by this act and who on December 27, 1988 is
6 exempted from licensing.

7 (j) An individual licensed to practice law in this state and
8 not engaged in the business of negotiating loans secured by real
9 property, when the individual renders services in the course of his
10 or her practice as an attorney-at-law.

11 (k) A person who makes mortgage loans exclusively for the
12 benefit of employees of that person if the proceeds of the loan are
13 used to assist the employee in meeting his or her housing needs.

14 (l) A person acting as a fiduciary with respect to any employee
15 pension benefit plan qualified under the internal revenue code who
16 makes mortgage loans solely to plan participants from plan assets.

17 (m) A mortgage broker, mortgage lender, or a mortgage servicer
18 ~~which~~ **THAT** is a subsidiary or affiliate of a depository financial
19 institution or a subsidiary or affiliate of a holding company of a
20 depository financial institution ~~which~~ **IF THE** depository financial
21 institution maintains its main office or a branch office in this
22 state.

23 (n) A nonprofit corporation that makes, brokers, or services
24 mortgage loans in connection with a neighborhood housing program
25 assisted under the neighborhood reinvestment corporation act, ~~title~~
26 ~~VI of Public Law 95-557, 42 U.S.C.~~ **USC** 8101 to 8107.

27 (o) A person determined by the commissioner to meet the

1 qualifications established under section 25a.

2 Sec. 27. (1) Any mortgage broker, mortgage lender, or mortgage
3 servicer engaged in activities covered by this act on the effective
4 date of this act ~~shall have~~**HAS** 90 days after the effective date of
5 this act in which to file an application for a license together
6 with proof of financial responsibility as required by section 4,
7 and to pay any required fees, or to register and pay any required
8 registration fee. During the 90-day period, and until the
9 commissioner acts on the application, the applicant ~~shall be~~**IS**
10 entitled to operate without a license but ~~shall~~**MUST** otherwise
11 comply with all other provisions of this act.

12 (2) A MORTGAGE LOAN OFFICER ENGAGED IN ACTIVITIES COVERED BY
13 THIS ACT ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
14 THIS SUBSECTION HAS 90 DAYS AFTER THE EFFECTIVE DATE OF THIS ACT IN
15 WHICH TO FILE AN APPLICATION FOR A LICENSE, TOGETHER WITH PROOF OF
16 FINANCIAL RESPONSIBILITY AS REQUIRED BY SECTION 4, AND TO PAY ANY
17 REQUIRED FEES. DURING THE 90-DAY PERIOD, AND UNTIL THE COMMISSIONER
18 ACTS ON THE APPLICATION, THE APPLICANT IS ENTITLED TO OPERATE
19 WITHOUT A LICENSE BUT MUST OTHERWISE COMPLY WITH ALL OTHER
20 PROVISIONS OF THIS ACT.

21 Sec. 29. (1) A person, or any owner, partner, member, officer,
22 director, trustee, employee, agent, broker, or their representative
23 acting on the authority of ~~such~~**THAT** person, who willfully or
24 intentionally does any of the following is guilty of a misdemeanor
25 punishable by a fine of not more than \$5,000.00, or imprisonment
26 for not more than 3 years, or both:

27 (a) Engages in this state in the business of a mortgage

1 broker, mortgage lender, **MORTGAGE LOAN OFFICER**, or mortgage
2 servicer without a license or registration required under this act.

3 (b) Transfers or assigns a mortgage loan or a security
4 directly representing an interest in 1 or more mortgage loans
5 before the disbursement of 75% or more of the proceeds of the
6 mortgage loan to, or for the benefit of, the borrower. This
7 subdivision does not apply to any of the following:

8 (i) A land contract not considered to be an equitable mortgage.

9 (ii) A loan made under a state or federal government program
10 that allows the lender to escrow more than 25% of the loan proceeds
11 for a limited period of time.

12 (iii) A construction loan.

13 (iv) A loan that provides in writing that the loan proceeds
14 shall be disbursed to or for the benefit of the borrower in
15 installments or upon the request of the borrower or upon the
16 completion of renovations or repairs to the dwelling situated on
17 the real property subject to the mortgage loan.

18 (c) Transfers or assigns a mortgage loan or a security
19 representing an interest in 1 or more mortgage loans to an
20 individual investor unless 1 or more of the following apply:

21 (i) The transfer or assignment is made through a broker-dealer
22 which is a member of the New York stock exchange.

23 (ii) The transfer or assignment is made through a broker-dealer
24 who meets all of the following criteria:

25 (A) The broker-dealer is registered under the uniform
26 securities act, ~~Act No. 265 of the Public Acts of 1964, being~~
27 ~~sections 451.501 to 451.818 of the Michigan Compiled Laws 1964 PA~~

1 265, MCL 451.501 TO 451.818.

2 (B) The broker-dealer is not an affiliate of the mortgage
3 lender unless the person acquired the broker-dealer registration,
4 directly or indirectly, before September 1, 1987 under ~~Act No. 265~~
5 ~~of the Public Acts of 1964~~ **THE UNIFORM SECURITIES ACT, 1964 PA 265,**
6 **MCL 451.501 TO 451.818,** was affiliated with a mortgage lender
7 before September 1, 1987, and has continuously maintained that
8 registration subsequent to September 1, 1987. For purposes of this
9 subparagraph, if an aggregate of more than 10% of the outstanding
10 voting stock or interest in a corporation, unincorporated
11 organization, partnership, or other legal entity that is a broker-
12 dealer or mortgage lender is sold, transferred, assigned, or
13 otherwise conveyed subsequent to September 1, 1987, the
14 registration shall be considered to not have been continuously
15 maintained.

16 (C) The broker-dealer acquired the mortgage loan or security
17 on a firm commitment.

18 (iii) The transfer or assignment is made to a person who the
19 transferor or assignor believes, or has reasonable grounds to
20 believe, is 1 of the following:

21 (A) A business entity having either net income from operations
22 after taxes in excess of \$100,000.00 in its last fiscal year or its
23 latest 12-month period, or a net worth in excess of \$1,000,000.00
24 at the time of purchase.

25 (B) An individual who, after the purchase, has an investment
26 of more than \$50,000.00 in ~~such~~ loans or securities **DESCRIBED IN**
27 **THIS SUBDIVISION,** including installment payments to be made within

1 1 year after purchase by the individual, has either personal income
2 before taxes in excess of \$100,000.00 for his or her last fiscal
3 year or latest 12-month period and is capable of bearing the
4 economic risk, or net worth in excess of \$1,000,000.00, and has the
5 knowledge and experience in financial and business matters that he
6 or she is capable of evaluating the merits and risks of the
7 prospective investment, or has obtained the advice of an attorney,
8 certified public accountant, or investment adviser registered under
9 the investment advisers act of 1940, or an investment adviser
10 registered under ~~Act No. 265 of the Public Acts of 1964~~ **THE UNIFORM**
11 **SECURITIES ACT, 1964 PA 265, MCL 451.501 TO 451.818**, with respect
12 to the merits and risks of the prospective investment.

13 (iv) A transferor or assignor does not maintain its principal
14 place of business in this state and the transferee or assignee is
15 not a resident of this state and does not maintain its principal
16 place of business in this state.

17 (2) If the commissioner finds that a licensee or registrant
18 has violated this act or the rules promulgated under this act, the
19 commissioner may do 1 or more of the following:

20 (a) Assess a civil fine against the licensee, registrant, or a
21 person who controls the licensee or registrant of not more than
22 \$1,000.00 for each violation, except that the licensee, registrant,
23 or a person shall not be fined more than \$10,000.00 for a
24 transaction resulting in more than 1 violation, plus the costs of
25 investigation.

26 (b) Suspend or revoke a license or registration or refuse to
27 issue a license or renew a license or registration.

1 (c) Require the licensee or registrant or a person who
2 controls the licensee or registrant to make restitution to each
3 injured individual, if the commissioner finds that the violation of
4 this act or a rule promulgated under this act resulted in an injury
5 to 1 or more individuals.

6 (3) A civil fine assessed under subsection (2) may be sued for
7 and recovered by and in the name of the commissioner and may be
8 collected and enforced by summary proceedings by the attorney
9 general. Each individual injured by a violation of this act or a
10 rule ~~shall constitute~~ **CONSTITUTES** a separate violation. In
11 determining under subsection (2) the amount of a fine, whether to
12 suspend or revoke a license or registration, whether to refuse to
13 issue or renew a license, or the amount of restitution, the
14 commissioner shall consider the extent to which the violation was a
15 knowing and willful violation, the extent of the injury suffered
16 because of the violation, the corrective action taken by the
17 licensee or registrant to ensure that the violation will not be
18 repeated, and the record of the licensee or registrant in complying
19 with this act. Any proceedings under this subsection ~~shall be~~ **IS**
20 subject to the procedures of the administrative procedures act of
21 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.201~~
22 ~~to 24.328 of the Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO~~
23 **24.328.**

24 (4) Subsection (2) does not apply to a violation of this act
25 that results from a bona fide error that occurs notwithstanding the
26 adoption and observance of reasonable procedures intended to
27 prevent the occurrence of the error.

1 SEC. 29A. IF THE LICENSE OF A MORTGAGE BROKER OR MORTGAGE
2 LENDER IS REVOKED, THE LICENSE OF EACH MORTGAGE LOAN OFFICER
3 EMPLOYED OR ENGAGED BY THE MORTGAGE BROKER OR MORTGAGE LENDER IS
4 AUTOMATICALLY SUSPENDED. IF A MORTGAGE LOAN OFFICER LICENSE IS
5 SUSPENDED UNDER THIS SECTION AND HE OR SHE APPLIES FOR AND IS
6 ISSUED A NEW LICENSE FOR THE SAME TERM AS HIS OR HER ORIGINAL
7 SUSPENDED LICENSE, THE DEPARTMENT SHALL ISSUE THE NEW LICENSE
8 WITHOUT CHARGE.

9 Enacting section 1. Section 33 of the mortgage brokers,
10 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1683, is
11 repealed.