

HOUSE BILL No. 5307

October 11, 2007, Introduced by Reps. Young, Angerer, Miller, Clack, Simpson, Byrnes, Jackson, Melton, Johnson, Kathleen Law, Accavitti, Hopgood, Brown, Constan, Meisner, Valentine, Hammel, Tobocman, Robert Jones, Bieda, Vagnozzi, Leland, Donigan, Bauer and Dean 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 section 22 (MCL 445.1672), as amended by 2002 PA 391,
and by adding section 24a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 22. ~~(1) It is a violation of this act for a~~ A licensee or
2 registrant ~~to~~ **SHALL NOT** do any of the following:

3 (a) Fail to conduct the business in accordance with law, this
4 act, or a rule promulgated or order issued under this act.

5 (b) Engage in fraud, deceit, or material misrepresentation in
6 connection with any transaction governed by this act.

7 (c) Intentionally or due to gross or wanton negligence,

1 repeatedly fail to provide borrowers material disclosures of
2 information as required by law.

3 (d) Suppress or withhold from the commissioner any information
4 that the licensee or registrant possesses and that, if submitted,
5 would have made the licensee or registrant ineligible for licensing
6 or registration under this act or would have warranted the
7 commissioner's denial of a license application or refusal to accept
8 a registration.

9 (e) Fail to comply with 1966 PA 125, MCL 565.161 to 565.164,
10 regulating the handling of mortgage escrow accounts by mortgagees.

11 (f) Until proper disbursement is made, fail to place in a
12 trust or escrow account held by a federally insured depository
13 financial institution in a manner approved by the commissioner any
14 money, funds, deposits, checks, drafts, or other negotiable
15 instruments received by the licensee that the borrower is obligated
16 to pay to a third party, including amounts paid to the holder of
17 the mortgage loan, amounts for property taxes and insurance
18 premiums, or amounts paid under an agreement that requires if the
19 mortgage loan is not closed the amounts paid shall be refunded to
20 the prospective borrower or if the mortgage loan is closed the
21 amounts paid shall be applied to fees and costs incurred at the
22 time the mortgage loan is closed. Fees and costs include, but are
23 not limited to, title insurance premiums and recording fees. Fees
24 and costs do not include amounts paid to cover costs incurred to
25 process the mortgage loan application, to obtain an appraisal, or
26 to receive a credit report.

27 (g) Refuse to permit an examination or investigation by the

1 commissioner of the books and affairs of the licensee or
2 registrant, or has refused or failed, within a reasonable time, to
3 furnish any information or make any report that may be required by
4 the commissioner under this act.

5 (h) To be convicted of a felony, or any misdemeanor of which
6 an essential element is fraud.

7 (i) Refuse or fail to pay, within a reasonable time, those
8 expenses assessed to the licensee or registrant under this act.

9 (j) Fail to make restitution after having been ordered to do
10 so by the commissioner or an administrative agency, or fail to make
11 restitution or pay damages to persons injured by the licensee's or
12 registrant's business transactions after having been ordered to do
13 so by a court.

14 (k) Fail to make a mortgage loan in accordance with a written
15 commitment to make a mortgage loan issued to, and accepted by, a
16 person when the person has timely and completely satisfied all the
17 conditions of the commitment before the expiration of the
18 commitment.

19 (l) Require a prospective borrower to deal exclusively with the
20 licensee or registrant in regard to a mortgage loan application.

21 (m) Take a security interest in real property before closing
22 the mortgage loan to secure payment of fees assessed in connection
23 with a mortgage loan application.

24 (n) Except as provided under section 18e, knowingly permit a
25 person to violate an order that has been issued under this act or
26 any other financial licensing act that prohibits that person from
27 being employed by, an agent of, or a control person of the licensee

1 or registrant.

2 (2) A LICENSEE OR REGISTRANT SHALL NOT FAIL OR NEGLECT TO DO
3 ANY OF THE FOLLOWING IN CONNECTION WITH THE BROKERING, SERVICING,
4 OR MAKING OF ANY MORTGAGE LOAN:

5 (A) ACT IN GOOD FAITH AND WITH FAIR DEALING IN ANY
6 TRANSACTION, PRACTICE, OR COURSE OF BUSINESS.

7 (B) SAFEGUARD AND ACCOUNT FOR ANY MONEY HANDLED FOR THE
8 BORROWER.

9 (C) FOLLOW REASONABLE AND LAWFUL INSTRUCTIONS FROM THE
10 BORROWER.

11 (D) USE REASONABLE SKILL, CARE, AND DILIGENCE.

12 (E) TIMELY AND CLEARLY DISCLOSE TO THE BORROWER MATERIAL
13 INFORMATION THAT MIGHT REASONABLY AFFECT THE BORROWER'S RIGHTS,
14 INTERESTS, OR ABILITY TO RECEIVE THE BORROWER'S INTENDED BENEFIT
15 FROM THE MORTGAGE LOAN, INCLUDING, BUT NOT LIMITED TO, THE TOTAL
16 COMPENSATION THE BROKER WOULD RECEIVE FROM ANY OF THE LOAN OPTIONS
17 THE LICENSEE OR REGISTRANT PRESENTS TO THE BORROWER.

18 (F) MAKE REASONABLE EFFORTS TO SECURE A MORTGAGE LOAN THAT IS
19 REASONABLY ADVANTAGEOUS TO THE BORROWER CONSIDERING ALL THE
20 CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, THE RATES, CHARGES,
21 AND REPAYMENT TERMS OF THE LOAN.

22 (3) THE DUTIES AND STANDARDS OF CARE CREATED IN SUBSECTION (2)
23 CANNOT BE WAIVED OR MODIFIED.

24 SEC. 24A. (1) THE HOME LOAN PROTECTION ACT APPLIES TO A
25 LICENSEE OR REGISTRANT. A LICENSEE OR REGISTRANT SHALL COMPLY WITH
26 THE REQUIREMENTS OF THAT ACT IN CONNECTION WITH ANY HOME LOANS.

27 (2) IN ADDITION TO ANY PENALTIES AND REMEDIES PROVIDED BY THIS

1 ACT, A LICENSEE OR REGISTRANT IS ALSO SUBJECT TO THE REMEDY AND
2 PENALTY PROVISIONS OF THE HOME LOAN PROTECTION ACT FOR A VIOLATION
3 OF SUBSECTION (1).

4 (3) AS USED IN THIS SECTION:

5 (A) "HOME LOAN" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE
6 HOME LOAN PROTECTION ACT, MCL 445.1632.

7 (B) "HOME LOAN PROTECTION ACT" MEANS THE HOME LOAN PROTECTION
8 ACT, 2002 PA 660, MCL 445.1631 TO 445.1642.

9 Enacting section 1. This amendatory act does not take effect
10 unless all of the following bills of the 94th Legislature are
11 enacted into law:

12 (a) Senate Bill No.____ or House Bill No. 5294(request no.
13 02456'07 *).

14 (b) Senate Bill No.____ or House Bill No. 5295(request no.
15 04909'07 *).

16 (c) Senate Bill No.____ or House Bill No. 5296(request no.
17 04910'07 *).

18 (d) Senate Bill No.____ or House Bill No. 5297(request no.
19 04911'07 *).

20 (e) Senate Bill No.____ or House Bill No. 5298(request no.
21 04912'07 *).

22 (f) Senate Bill No.____ or House Bill No. 5299(request no.
23 04913'07 *).

24 (g) Senate Bill No.____ or House Bill No. 5300(request no.
25 05435'07).

26 (h) Senate Bill No.____ or House Bill No. 5301(request no.
27 05436'07).

1 (i) Senate Bill No. _____ or House Bill No. 5302 (request no.
2 05437'07).

3 (j) Senate Bill No. _____ or House Bill No. 5303 (request no.
4 05438'07).