HOUSE BILL No. 5308

October 11, 2007, Introduced by Reps. Valentine, Angerer, Miller, Clack, Simpson, Byrnes, Jackson, Melton, Johnson, Young, Accavitti, Kathleen Law, Hopgood, Meisner, Constan, Brown, Hammel, Tobocman, Robert Jones, Bieda, Vagnozzi, Leland, Donigan and Dean and referred to the Committee on Banking and Financial Services.

A bill to amend 1981 PA 125, entitled

"The secondary mortgage loan act,"

by amending section 24 (MCL 493.74), as amended by 2002 PA 392, and by adding section 24a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 24. (1) A licensee or registrant shall not transfer or assign a secondary mortgage loan or a security directly representing an interest in 1 or more secondary mortgage loans before the disbursement of 75% or more of the proceeds of the secondary mortgage loan to, or for the benefit of, the borrower. This subsection shall not apply to any of the following:

(a) A land contract not considered to be an equitable

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secondary mortgage.

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

(c) A construction loan.

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

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

(a) Suppress or withhold from the commissioner any information that the licensee or registrant possesses that would make the licensee or registrant ineligible for licensing or registration under this act or would warrant the commissioner's denial of a license or registration application.

(b) Violate any provisions of 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(c) Until proper disbursement is made, fail to place in a trust or escrow account held by a depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by a broker, lender, or servicer that is the portion of a payment on a secondary mortgage loan that the person is obligated to pay to a third party. The deposits shall include amounts paid to the holder of the secondary mortgage loan, amounts for property taxes and insurance premiums, and amounts paid under an agreement that requires, if the secondary mortgage loan is not closed, the amounts paid shall be refunded to the prospective borrower, or if the secondary mortgage loan is closed, the amounts paid shall be applied to fees and costs incurred at the time the secondary mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the secondary mortgage loan application, to obtain an appraisal, or to receive a credit report.

(d) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or refuse or fail, within a reasonable time, to furnish any information or make a report that may be required by the commissioner under this act.

(e) Be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(f) Refuse or fail to pay within a reasonable time expenses assessed under this act.

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

(h) Fail to make a secondary mortgage loan pursuant to, and in accordance with, a written commitment to make a secondary mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment prior to the expiration of the commitment.

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

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

(k) Except as otherwise provided under section 14e, knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee or registrant.

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

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

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

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

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

(E) TIMELY AND CLEARLY DISCLOSE TO THE BORROWER MATERIAL INFORMATION THAT MIGHT REASONABLY AFFECT THE BORROWER'S RIGHTS,

INTERESTS, OR ABILITY TO RECEIVE THE BORROWER'S INTENDED BENEFIT FROM THE SECONDARY MORTGAGE LOAN, INCLUDING, BUT NOT LIMITED TO, THE TOTAL COMPENSATION THE BROKER WOULD RECEIVE FROM ANY OF THE LOAN OPTIONS THE LICENSEE OR REGISTRANT PRESENTS TO THE BORROWER.

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

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

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

(2) IN ADDITION TO ANY PENALTIES AND REMEDIES PROVIDED BY THIS ACT, A LICENSEE OR REGISTRANT IS ALSO SUBJECT TO THE REMEDY AND PENALTY PROVISIONS OF THE HOME LOAN PROTECTION ACT FOR A VIOLATION OF SUBSECTION (1).

(3) AS USED IN THIS SECTION:

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

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

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

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

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

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

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

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

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

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

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

(i) Senate Bill No.____ or House Bill No. 5302(request no. 05437'07).

(j) Senate Bill No.____ or House Bill No. 5303(request no. 05438'07).