

# SENATE BILL No. 462

April 23, 2009, Introduced by Senators RICHARDVILLE, SANBORN, STAMAS, OLSHOVE, CHERRY, ANDERSON, HARDIMAN, PAPPAGEORGE, PATTERSON and KAHN and referred to the Committee on Banking and Financial Institutions.

A bill to provide for the licensing of mortgage loan originators; to regulate the business practices of mortgage loan originators; to establish certain obligations of employees and principals of mortgage loan originators; to prescribe the powers and duties of certain state agencies and officials; and to provide remedies and prescribe penalties.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "mortgage loan originator licensing act".

3           Sec. 3. As used in this act:

4           (a) "Commissioner" means the commissioner of the office of  
5 financial and insurance regulation in the department of energy,  
6 labor, and economic growth.

7           (b) "Depository institution" means that term as defined in  
8 section 3 of the federal deposit insurance act, 12 USC 1813, or a

1 credit union.

2 (c) "Dwelling" means that term as defined in section 103(v) of  
3 the truth in lending act, 15 USC 1602.

4 (d) "Employee" means an individual who meets both of the  
5 following:

6 (i) Has an employment relationship acknowledged by that  
7 individual and the person that engages that individual to originate  
8 mortgage loans.

9 (ii) Is treated as an employee by the person that engages that  
10 individual to originate mortgage loans for compliance with federal  
11 income tax laws.

12 (e) "Federal banking agencies" means the board of governors of  
13 the federal reserve system, the comptroller of the currency, the  
14 director of the office of thrift supervision, the national credit  
15 union administration, and the federal deposit insurance  
16 corporation.

17 (f) "Financial licensing acts" means that term as defined in  
18 section 2 of the consumer financial services act, 1988 PA 161, MCL  
19 487.2052.

20 (g) "Immediate family member" means a spouse, child, sibling,  
21 parent, grandparent, or grandchild. The term includes stepparents,  
22 stepchildren, stepsiblings, and adoptive relationships.

23 (h) "Individual" means a natural person.

24 (i) "Licensed mortgage loan originator" means a mortgage loan  
25 originator who holds a valid license issued by the commissioner  
26 under this act.

27 (j) "Loan processor or underwriter" means an individual who

1 performs clerical or support duties as an employee at the direction  
2 of and subject to the supervision and instruction of a person  
3 licensed or designated as exempt from licensing under the mortgage  
4 brokers, lenders, and servicers licensing act, 1987 PA 173, MCL  
5 445.1651 to 445.1684; the secondary mortgage loan act, 1981 PA 125,  
6 MCL 493.51 to 493.81; or the consumer financial services act, 1988  
7 PA 161, MCL 487.2051 to 487.2072. For purposes of this subdivision,  
8 "clerical or support duties" may include any of the following after  
9 an application is received:

10 (i) The receipt, collection, distribution, and analysis of  
11 information common for the processing or underwriting of a  
12 residential mortgage loan.

13 (ii) Communicating with a consumer to obtain the information  
14 necessary for the processing or underwriting of a loan, to the  
15 extent that the communication does not include offering or  
16 negotiating loan rates or terms, or counseling consumers about  
17 residential mortgage loan rates or terms.

18 (k) "Mortgage loan originator" means an individual who meets  
19 all of the following:

20 (i) For compensation or gain or in the expectation of  
21 compensation or gain, does any of the following:

22 (A) Takes a residential mortgage loan application.

23 (B) Offers or negotiates terms of a residential mortgage loan.

24 (ii) Is not an individual engaged solely as a loan processor or  
25 underwriter except as otherwise provided in section 5(3).

26 (iii) Is not a person who only performs real estate brokerage  
27 activities and is licensed or registered under the laws of this

1 state, unless the person is compensated by a lender, a mortgage  
2 broker, or other mortgage loan originator or by any agent of a  
3 lender, mortgage broker, or other mortgage loan originator.

4 (iv) Is not a person solely involved in extensions of credit  
5 relating to timeshare plans, as that term is defined in 11 USC  
6 101(53D).

7 (l) "Nationwide mortgage licensing system and registry" means a  
8 mortgage licensing system developed and maintained by the  
9 conference of state bank supervisors and the American association  
10 of residential mortgage regulators for the licensing and  
11 registration of licensed mortgage loan originators.

12 (m) "Nontraditional mortgage product" means any mortgage  
13 product other than a 30-year fixed rate mortgage.

14 (n) "Person" means an individual, corporation, limited  
15 liability company, partnership, association, or other legal entity.

16 (o) "Real estate brokerage activity" means any activity that  
17 involves offering or providing real estate brokerage services to  
18 the public, including, but not limited to, any of the following:

19 (i) Acting as a real estate agent or real estate broker for a  
20 buyer, seller, lessor, or lessee of real property.

21 (ii) Bringing together parties interested in the sale,  
22 purchase, lease, rental, or exchange of real property.

23 (iii) On behalf of any party, negotiating any portion of a  
24 contract relating to the sale, purchase, lease, rental, or exchange  
25 of real property, other than in connection with providing financing  
26 with respect to that contract.

27 (iv) Engaging in any activity for which a person engaged in the

1 activity is required to be registered or licensed as a real estate  
2 agent or real estate broker under any applicable law.

3 (v) Offering to engage in any activity, or act in any  
4 capacity, described in subparagraphs (i), (ii), (iii), or (iv).

5 (p) "Registered mortgage loan originator" means an individual  
6 who meets all of the following:

7 (i) Is a mortgage loan originator and is an employee of any of  
8 the following:

9 (A) A depository institution.

10 (B) A subsidiary of a depository institution that is owned and  
11 controlled by that depository institution and is regulated by a  
12 federal banking agency.

13 (C) An institution regulated by the farm credit  
14 administration.

15 (ii) Is registered with, and maintains a unique identifier  
16 through, the nationwide mortgage licensing system and registry.

17 (q) "Residential mortgage loan" means any loan primarily for  
18 personal, family, or household use that is secured by a mortgage,  
19 deed of trust, or other equivalent consensual security interest on  
20 a dwelling or residential real estate on which a person has  
21 constructed or intends to construct a dwelling.

22 (r) "Residential real estate" means any real property located  
23 in this state on which a person has constructed or intends to  
24 construct a dwelling.

25 (s) "SAFE act" means the secure and fair enforcement for  
26 mortgage licensing act of 2008, title V of the housing and economic  
27 recovery act of 2008, Public Law 110-289, 12 USC 5101 to 5116.

1           (t) "Unique identifier" means a number or other identifier  
2 assigned by protocols established by the nationwide mortgage  
3 licensing system and registry.

4           Sec. 5. (1) Unless specifically exempted under subsection (2),  
5 beginning January 1, 2011, an individual shall not engage in the  
6 business of a mortgage loan originator with respect to any dwelling  
7 located in this state without first obtaining and maintaining  
8 annually a license under this act. Each licensed mortgage loan  
9 originator must register with and maintain a valid unique  
10 identifier issued by the nationwide mortgage licensing system and  
11 registry.

12           (2) Each of the following is exempt from this act:

13           (a) A registered mortgage loan originator, when acting for an  
14 entity described section 3(p)(i)(A), (B), or (C).

15           (b) An individual who offers or negotiates terms of a  
16 residential mortgage loan with or on behalf of an immediate family  
17 member of that individual.

18           (c) An individual who offers or negotiates terms of a  
19 residential mortgage loan secured by a dwelling that served as his  
20 or her residence.

21           (d) A licensed attorney who negotiates the terms of a  
22 residential mortgage loan on behalf of a client as an ancillary  
23 matter to the attorney's representation of the client, unless the  
24 attorney is compensated by a lender, mortgage broker, or other  
25 mortgage loan originator or by any agent of a lender, mortgage  
26 broker, or other mortgage loan originator.

27           (3) A loan processor or underwriter who is an independent

1 contractor may not engage in the activities of a loan processor or  
2 underwriter unless that independent contractor loan processor or  
3 underwriter obtains and maintains a license under subsection (1).  
4 Each independent contractor loan processor or underwriter licensed  
5 as a mortgage loan originator must have and maintain a valid unique  
6 identifier issued by the nationwide mortgage licensing system and  
7 registry.

8 (4) The commissioner may establish licensing rules and interim  
9 procedures for licensing and acceptance of applications. For  
10 previously registered or licensed individuals, the commissioner may  
11 establish expedited review and licensing procedures.

12 Sec. 7. (1) An applicant for a license under this act shall  
13 apply in a form as prescribed by the commissioner. The applicant  
14 shall include with the application the fee required under section  
15 19 and the criminal history check required under subsection (2).  
16 Each application form shall contain the content established by  
17 rule, instruction, or procedure of the commissioner. The  
18 commissioner may change or update the application form and its  
19 contents as necessary by the commissioner in order to carry out the  
20 purposes of this act.

21 (2) A person that employs or offers to employ, or engages or  
22 offers to engage as an agent, an individual as a mortgage loan  
23 originator, to originate mortgage loans after December 31, 2010,  
24 shall conduct a criminal history check of that individual and the  
25 applicant shall submit the results of that criminal history check  
26 with his or her application for license. All of the following apply  
27 to the criminal history check of an individual required under this

1 subsection:

2 (a) The federal bureau of investigation shall perform the  
3 criminal history check.

4 (b) The individual who is the subject of the criminal history  
5 check shall have his or her fingerprints taken by a law enforcement  
6 agency or by another person that the commissioner determines is  
7 qualified to take fingerprints; shall pay the agency or person the  
8 fees as required by the federal bureau of investigation for  
9 processing fingerprints and completing a criminal history check;  
10 and shall request that the agency or person forward the  
11 fingerprints and appropriate fee to the federal bureau of  
12 investigation for a national criminal history check.

13 (c) After receiving a proper request and the required fees  
14 under this subsection, the federal bureau of investigation shall  
15 conduct the criminal history check and provide the commissioner and  
16 the applicant with the results of the criminal history check. The  
17 results shall contain any criminal history record information  
18 concerning the individual maintained by the federal bureau of  
19 investigation's criminal history check.

20 (d) A criminal history check required under this subsection  
21 may be conducted, requested of and performed by the federal bureau  
22 of investigation, and submitted to the commissioner at any time on  
23 or after July 31, 2009.

24 (3) The commissioner is authorized to establish relationships  
25 or contracts with the nationwide mortgage licensing system and  
26 registry or other entities designated by the nationwide mortgage  
27 licensing system and registry to collect and maintain records and



1 process transaction fees or other fees related to licensed mortgage  
2 loan originators or other persons subject to this act.

3 (4) In connection with an application for licensing as a  
4 mortgage loan originator, an applicant shall at a minimum furnish  
5 to the nationwide mortgage licensing system and registry  
6 information concerning the applicant's identity, including, but not  
7 limited to, all of the following:

8 (a) The results of the criminal history check conducted under  
9 subsection (2).

10 (b) The applicant's personal history and experience in a form  
11 prescribed by the nationwide mortgage licensing system and  
12 registry, including the submission of authorization for the  
13 nationwide mortgage licensing system and registry and the  
14 commissioner to obtain all of the following concerning the  
15 applicant:

16 (i) An independent credit report obtained from a consumer  
17 reporting agency, as defined in 603 of the fair credit reporting  
18 act, 15 USC 1681a.

19 (ii) Information related to any administrative, civil, or  
20 criminal findings by any governmental jurisdiction.

21 (5) For the purposes of this section, the commissioner may use  
22 the nationwide mortgage licensing system and registry for any of  
23 the following:

24 (a) Requesting information from and distributing information  
25 to the department of justice or any governmental agency.

26 (b) Requesting and distributing information to and from any  
27 source as directed by the commissioner.

1           Sec. 9. (1) The commissioner shall not issue a mortgage loan  
2 originator license unless the commissioner makes at a minimum the  
3 following findings:

4           (a) The applicant is not subject to a prohibition order issued  
5 by the commissioner under section 27 or under any of the financial  
6 licensing acts.

7           (b) The applicant has never had a mortgage loan originator  
8 license revoked in any governmental jurisdiction, except that the  
9 commissioner shall not consider a revocation that is formally  
10 vacated as a revocation for purposes of this subdivision.

11           (c) Subject to subsection (2), the applicant has not been  
12 convicted of, or pled guilty or no contest to, any of the following  
13 in a domestic, foreign, or military court:

14           (i) Within the 10-year period preceding the date of the license  
15 application, a felony other than a felony described in subparagraph  
16 (ii).

17           (ii) At any time preceding the date of the license application,  
18 any felony or misdemeanor involving embezzlement, forgery, fraud,  
19 money laundering, a financial transaction, or securities.

20           (d) The applicant has demonstrated financial responsibility,  
21 character, and general fitness that commands the confidence of the  
22 community and warrants a determination that the mortgage loan  
23 originator will operate honestly, fairly, and efficiently within  
24 the purposes of this act. A determination that an individual has  
25 not shown financial responsibility may include, but is not limited  
26 to, a finding of any of the following:

27           (i) Current outstanding judgments, except judgments solely as a

1 result of medical expenses.

2 (ii) Current outstanding tax liens or other government liens  
3 and filings.

4 (iii) Foreclosures within the past 3 years.

5 (iv) A pattern of seriously delinquent accounts within the past  
6 3 years.

7 (e) The applicant has completed the prelicensing education  
8 requirement described in section 11.

9 (f) The applicant has passed a written test that meets the  
10 test requirement described in section 13.

11 (g) The applicant has met the surety bond requirement  
12 described in section 29.

13 (2) The commissioner shall not consider a conviction for which  
14 a pardon was granted a conviction for purposes of subsection  
15 (1)(c).

16 Sec. 11. (1) To meet the prelicensing education requirement  
17 under section 9(1)(e), except as provided in subsection (6), the  
18 applicant shall complete at least 20 hours of education approved  
19 under subsection (2), including at least all of the following:

20 (a) Three hours of federal law and regulations.

21 (b) Three hours of ethics, including instruction on fraud,  
22 consumer protection, and fair lending issues.

23 (c) Two hours of training related to lending standards for the  
24 nontraditional mortgage product marketplace.

25 (2) Only prelicensing education courses reviewed and approved  
26 by the nationwide mortgage licensing system and registry may be  
27 used to satisfy the requirements of subsection (1). Review and

1 approval of a prelicensing education course shall include review  
2 and approval of the course provider.

3 (3) If approved by the nationwide mortgage licensing system  
4 and registry, a prelicensing education course may be provided by  
5 the employer of the applicant, an entity that is affiliated with  
6 the applicant by an agency contract, or a subsidiary or affiliate  
7 of that employer or entity.

8 (4) Prelicensing education may be offered in a classroom,  
9 online, or by any other means approved by the nationwide mortgage  
10 licensing system and registry.

11 (5) If a person completes any prelicensing education  
12 requirements described in subsection (1)(a), (b), or (c) that are  
13 approved by the nationwide mortgage licensing system and registry  
14 for any state, the commissioner shall accept those hours of  
15 education as credit toward completion of the prelicensing education  
16 requirements under this section.

17 (6) For an application for a mortgage loan originator license  
18 submitted before January 1, 2011, completion of the classroom  
19 instruction requirement described in section 2a(4)(d) of the  
20 mortgage brokers, lenders, and servicers licensing act, 1987 PA  
21 173, MCL 445.1652a, or section 2a(4)(d) of the secondary mortgage  
22 loan act, 1981 PA 125, MCL 493.52a, satisfies the prelicensing  
23 education requirement described in subsection (1). An applicant  
24 described in this subsection shall provide proof in the form of a  
25 certificate of completion or other evidence acceptable to the  
26 commissioner.

27 (7) If an unlicensed individual who formerly held a license

1 issued under this act applies for a new license under this act, he  
2 or she must prove that he or she completed all of the continuing  
3 education requirements of section 17 for the year in which the  
4 previous license was last held to be eligible for a new or renewed  
5 license.

6       Sec. 13. (1) To meet the written test requirement under  
7 section 9(1)(f), except as provided in subsection (5), an  
8 individual shall pass a qualified written test developed by the  
9 nationwide mortgage licensing system and registry and administered  
10 by a test provider approved by the nationwide mortgage licensing  
11 system and registry based on reasonable standards.

12       (2) A written test is not considered a qualified written test  
13 for purposes of subsection (1) unless the test adequately measures  
14 the applicant's knowledge and comprehension in appropriate subject  
15 areas, including all of the following:

16       (a) Ethics.

17       (b) Federal law and regulation pertaining to mortgage  
18 origination and to mortgage lending, including, but not limited to,  
19 fraud, consumer protection, and fair lending issues and the  
20 nontraditional mortgage marketplace.

21       (c) State law and regulation pertaining to mortgage  
22 origination and to mortgage lending, including, but not limited to,  
23 fraud, consumer protection, and fair lending issues and the  
24 nontraditional mortgage marketplace.

25       (3) If the test provider is approved by the nationwide  
26 mortgage licensing system and registry, the test provider may  
27 provide a test at the location of the employer of the applicant,

1 the location of any subsidiary or affiliate of the employer of the  
2 applicant, or the location of any entity with which the applicant  
3 holds an exclusive arrangement to conduct the business of a  
4 mortgage loan originator.

5 (4) All of the following apply to a test under this section:

6 (a) An individual is not considered to have passed a qualified  
7 written test unless the individual achieves a test score of 75% or  
8 more correct answers to questions.

9 (b) An individual may retake a test 3 consecutive times, if  
10 each consecutive retaking occurs at least 30 days after the  
11 preceding test.

12 (c) If an individual fails 3 consecutive tests, the individual  
13 must wait at least 6 months before taking the test again.

14 (d) If an unlicensed individual who formerly held a license  
15 issued under this act applies for a new license under this act, he  
16 or she must retake the test if it has been at least 5 years since  
17 he or she last held a valid license under this act.

18 (5) If an applicant for a mortgage loan originator license has  
19 met the testing requirement described in section 2a(4)(e) of the  
20 mortgage brokers, lenders, and servicers licensing act, 1987 PA  
21 173, MCL 445.1652a, or section 2a(4)(e) of the secondary mortgage  
22 loan act, 1981 PA 125, MCL 493.52a, in the 5-year period preceding  
23 the date of the application, and provides evidence acceptable to  
24 the commissioner that he or she met that testing requirement, the  
25 applicant is considered to have met that part of the written test  
26 requirement under section 9(1)(f) applicable to the state law and  
27 regulation described in subsection (2)(c).

1           Sec. 15. (1) The commissioner shall annually renew the license  
2 of a licensed mortgage loan originator if all of the following are  
3 met before his or her current license expires:

4           (a) The mortgage loan originator continues to meet the minimum  
5 standards for license issuance under section 9.

6           (b) The mortgage loan originator has satisfied the annual  
7 continuing education requirements described in section 17.

8           (c) The mortgage loan originator has paid the fee required  
9 under section 19.

10          (2) If a mortgage loan originator fails to satisfy the  
11 requirements of subsection (1) for renewal of his or her license,  
12 the license shall expire. The commissioner may adopt procedures for  
13 the reinstatement of expired licenses consistent with the standards  
14 established by the nationwide mortgage licensing system and  
15 registry.

16          Sec. 17. (1) To meet the annual continuing education  
17 requirements described in section 15(1)(b), a licensed mortgage  
18 loan originator shall complete at least 8 hours of education  
19 approved under subsection (2), including at least all of the  
20 following:

21           (a) Three hours of federal law and regulations.

22           (b) Two hours of ethics, including instruction on fraud,  
23 consumer protection, and fair lending issues.

24           (c) Two hours of training related to lending standards for the  
25 nontraditional mortgage product marketplace.

26          (2) Only continuing education courses reviewed and approved by  
27 the nationwide mortgage licensing system and registry, based on

1 reasonable standards, may be used to satisfy the requirements of  
2 subsection (1). Review and approval of a continuing education  
3 course shall include review and approval of the course provider.

4 (3) If approved by the nationwide mortgage licensing system  
5 and registry, a continuing education course may be provided by the  
6 employer of the mortgage loan originator, an entity that is  
7 affiliated with the mortgage loan originator by an agency contract,  
8 or a subsidiary or affiliate of that employer or entity.

9 (4) Continuing education may be offered in a classroom,  
10 online, or by any other means approved by the nationwide mortgage  
11 licensing system and registry.

12 (5) Both of the following apply to the continuing education  
13 requirements of a licensed mortgage loan originator:

14 (a) Except for section 15(2) and subsection (9), he or she may  
15 only receive credit for a continuing education course in the year  
16 in which the course is taken.

17 (b) He or she may not take the same approved course in the  
18 same or successive years to meet the annual requirements for  
19 continuing education.

20 (6) A licensed mortgage loan originator who is an approved  
21 instructor of an approved continuing education course may receive  
22 credit for the licensed mortgage loan originator's own annual  
23 continuing education requirement at the rate of 2 hours credit for  
24 every 1 hour taught.

25 (7) If a person successfully completes any continuing  
26 education requirements described in subsection (1)(a), (b), or (c)  
27 that are approved by the nationwide mortgage licensing system and



1 registry for any state, the commissioner shall accept those hours  
2 of education as credit toward completion of the continuing  
3 education requirements under this section.

4 (8) If an unlicensed individual who formerly held a license  
5 issued under this act applies for a new license under this act, he  
6 or she must complete the continuing education requirements for the  
7 last year in which the license was held to be eligible for a new or  
8 renewed license.

9 (9) The commissioner by rule may establish a procedure by  
10 which an individual who meets the requirements of section 15(1)(a)  
11 and (c) may make up any deficiency in continuing education.

12 Sec. 19. (1) At the time of making an initial application for  
13 a mortgage loan originator license under this act, the applicant  
14 shall pay to the commissioner the annual operating fee established  
15 by the commissioner under subsection (2).

16 (2) The commissioner shall annually establish a schedule of  
17 fees that are sufficient to pay, but not to exceed, the reasonably  
18 anticipated costs of the office of financial and insurance  
19 regulation for administering and enforcing this act. The fee  
20 schedule shall include all of the following:

21 (a) An annual fee for each licensed mortgage loan originator  
22 in an amount established by the commissioner. For purposes of this  
23 subdivision, the commissioner shall establish an amount for the  
24 annual fee that is sufficient to defray the estimated cost of  
25 administering and enforcing the provisions of this act.

26 (b) For amending or reissuing a mortgage loan originator  
27 license, a fee of not less than \$15.00 or more than \$200.00.

1 (c) A licensed mortgage loan originator shall pay the actual  
2 travel, lodging, and meal expenses incurred by employees of the  
3 office of financial and insurance regulation who travel out of  
4 state to conduct an examination or investigation of a licensed  
5 mortgage loan originator and the cost of independent investigators  
6 employed under section 33(6)(a).

7 (3) Fees received under this act are not refundable.

8 (4) If any fees or penalties provided for in this act are not  
9 paid when required, the attorney general may maintain an action  
10 against the delinquent licensed mortgage loan originator for the  
11 recovery of the fees and penalties together with interest and  
12 costs.

13 (5) A licensed mortgage loan originator who fails to submit to  
14 the commissioner the reports required under section 33(3) is  
15 subject to a penalty of \$25.00 for each day a required report is  
16 delinquent or \$1,000.00, whichever is less.

17 (6) A mortgage loan originator license renewal fee that is not  
18 received on or before December 31 is subject to a penalty of \$25.00  
19 for each day the fee is delinquent or \$1,000.00, whichever is less.

20 (7) Money received from the fees described in this section  
21 shall be deposited in the MBLSLA fund. As used in this subsection,  
22 "MBLSLA fund" means the restricted account created under section  
23 8(8) of the mortgage brokers, lenders, and servicers licensing act,  
24 1987 PA 173, MCL 445.1658.

25 (8) The annual operating fees set by the commissioner shall  
26 not exceed the levels needed to cover the estimated cost of  
27 enforcement of this act.

1           Sec. 21. In addition to any other duties imposed on the  
2 commissioner under this act, the commissioner shall require  
3 mortgage loan originators to be licensed and registered through the  
4 nationwide mortgage licensing system and registry. To carry out  
5 this requirement, the commissioner is authorized to participate in  
6 the nationwide mortgage licensing system and registry and may by  
7 rule establish other requirements that he or she considers  
8 necessary, including, but not limited to, any of the following:

9           (a) Background checks for any of the following:

10           (i) The criminal history of a licensed mortgage loan originator  
11 or license applicant through fingerprint or other databases.

12           (ii) Information about a licensed mortgage loan originator or  
13 license applicant in civil or administrative records.

14           (iii) A licensed mortgage loan originator's or license  
15 applicant's credit history.

16           (iv) Any other information about a licensed mortgage loan  
17 originator or license applicant considered necessary by the  
18 nationwide mortgage licensing system and registry.

19           (b) The payment of fees to apply for or renew licenses through  
20 the nationwide mortgage licensing system and registry.

21           (c) The setting or resetting as necessary of renewal or  
22 reporting dates.

23           (d) Requirements for amending or surrendering a license or any  
24 other activities that the commissioner considers necessary for  
25 participation in the nationwide mortgage licensing system and  
26 registry.

27           Sec. 23. The commissioner shall establish a process through

1 which mortgage loan originators may challenge information entered  
2 into the nationwide mortgage licensing system and registry by the  
3 commissioner.

4       Sec. 25. (1) To ensure the effective supervision and  
5 enforcement of this act, the commissioner may do any of the  
6 following, in a manner consistent with the requirements of the  
7 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
8 24.328:

9       (a) Deny, suspend, revoke, condition, or decline to renew a  
10 license for a violation of this act, rules issued under this act,  
11 or an order or directive entered under this act.

12       (b) Deny, suspend, revoke, condition or decline to renew a  
13 license if a licensed mortgage loan originator or license applicant  
14 fails at any time to meet the requirements of section 9 or 15 or  
15 withholds information or makes a material misstatement in an  
16 application for a license or renewal of a license.

17       (c) Order restitution against a person that is subject to this  
18 act for a violation of this act.

19       (d) Subject to subsections (2), (3), and (4), impose a civil  
20 fine on a person that is subject to this act.

21       (e) Issue any of the following orders or directives under this  
22 act:

23       (i) Order or direct a person that is subject to this act to  
24 cease and desist from conducting business, including an immediate  
25 temporary order to cease and desist.

26       (ii) Order or direct a person that is subject to this act to  
27 cease any harmful activities or violations of this act, including

1 an immediate temporary order to cease and desist.

2 (iii) Enter an immediate temporary order to cease business under  
3 a license or interim license issued pursuant to the authority  
4 granted under section 5(4), if the commissioner determines that the  
5 license or interim license was erroneously granted or the licensed  
6 mortgage loan originator is currently in violation of this act.

7 (iv) Issue an order under section 27.

8 (v) Order or direct any other affirmative action that the  
9 commissioner considers necessary.

10 (2) The commissioner may impose a civil fine on a mortgage  
11 loan originator or other person subject to this act, if the  
12 commissioner finds, on the record after notice and opportunity for  
13 hearing, that the mortgage loan originator or other person has  
14 violated or failed to comply with a requirement of this act, a rule  
15 promulgated by the commissioner under this act, or an order issued  
16 under the authority of this act.

17 (3) The maximum fine for each violation or failure to comply  
18 described in subsection (2) is \$25,000.00.

19 (4) Each violation or failure to comply described in  
20 subsection (2) is a separate and distinct violation or failure.

21 Sec. 27. (1) If in the opinion of the commissioner an  
22 individual has engaged in fraud, the commissioner may serve on that  
23 person a written notice of intention to prohibit that individual  
24 from being licensed under this act, licensed or registered under  
25 any of the financial licensing acts, or employed by, an agent of,  
26 or a control person of a licensee or registrant under any of the  
27 financial licensing acts.

1           (2) A notice issued under subsection (1) shall contain a  
2 statement of the facts supporting the prohibition and, except as  
3 provided under subsection (7), shall set a hearing on a date within  
4 60 days after the date of the notice. If the individual does not  
5 appear at the hearing, he or she is considered to have consented to  
6 the issuance of an order in accordance with the notice.

7           (3) If after a hearing held under subsection (2) the  
8 commissioner finds that any of the grounds specified in the notice  
9 have been established, the commissioner may issue an order of  
10 suspension or prohibition from being licensed under this act,  
11 licensed or registered under any of the financial licensing acts,  
12 or employed by, an agent of, or a control person of a licensee or  
13 registrant under any of the financial licensing acts.

14           (4) An order issued under subsection (2) or (3) is effective  
15 when served on an individual. The commissioner shall also serve a  
16 copy of the order upon the licensee of which the individual is an  
17 employee or agent. The order remains in effect until it is stayed,  
18 modified, terminated, or set aside by the commissioner or a  
19 reviewing court.

20           (5) After 5 years from the date of an order issued under  
21 subsection (2) or (3), the individual subject to the order may  
22 apply to the commissioner to terminate the order.

23           (6) If the commissioner considers that an individual served a  
24 notice under subsection (1) poses an imminent threat of financial  
25 loss to customers, the commissioner may serve on that individual an  
26 order of suspension from being employed by, an agent of, or a  
27 control person of a licensee or registrant under any of the

1 financial licensing acts. The suspension is effective on the date  
2 the order is issued and, unless stayed by a court, remains in  
3 effect until the commissioner completes the review required under  
4 this section and the commissioner has dismissed the charges  
5 specified in the order.

6 (7) Unless otherwise agreed to by the commissioner and the  
7 individual served with an order issued under subsection (6), the  
8 commissioner shall hold the hearing required under subsection (2)  
9 to review the suspension not earlier than 5 days or later than 20  
10 days after the date of the notice.

11 (8) If an individual is convicted of a felony involving fraud,  
12 dishonesty, or breach of trust, the commissioner may issue an order  
13 suspending or prohibiting him or her from being licensed under this  
14 act, licensed or registered under any of the financial licensing  
15 acts, or employed by, an agent of, or a control person of a  
16 licensee or registrant under any of the financial licensing acts.  
17 After 5 years from the date of the order, the individual subject to  
18 the order may apply to the commissioner to terminate the order.

19 (9) The commissioner shall mail a copy of any notice or order  
20 issued under this section to the employer or principal of the  
21 individual subject to the notice or order.

22 (10) Within 30 days after the commissioner has notified the  
23 parties that the case has been submitted to him or her for final  
24 decision, the commissioner shall render a decision that includes  
25 findings of fact supporting the decision and serve on each party to  
26 the proceeding a copy of the decision and an order consistent with  
27 the decision.

1           (11) Except for a consent order, a party to the proceeding or  
2 a person affected by an order issued under this section may obtain  
3 a judicial review of the order. A consent order may be reviewed as  
4 provided under the administrative procedures act of 1969, 1969 PA  
5 306, MCL 24.201 to 24.328. Except for an order under judicial  
6 review, the commissioner may terminate or set aside any order. The  
7 commissioner may terminate or set aside an order under judicial  
8 review with the permission of the court.

9           (12) Unless ordered by the court, the commencement of  
10 proceedings for judicial review under subsection (11) does not stay  
11 the commissioner's order.

12           (13) The commissioner may apply to the circuit court of Ingham  
13 county for the enforcement of any outstanding order issued under  
14 this section.

15           (14) Any individual who violates a final order issued under  
16 this section is guilty of a misdemeanor punishable by a fine of not  
17 more than \$5,000.00 or imprisonment for not more than 1 year, or  
18 both.

19           (15) As used in this section, "fraud" includes actionable  
20 fraud, actual or constructive fraud, criminal fraud, extrinsic or  
21 intrinsic fraud, fraud in the execution, in the inducement, in  
22 fact, or in law, or any other form of fraud.

23           Sec. 29. (1) Each mortgage loan originator must provide to the  
24 commissioner or be covered by a surety bond that meets the  
25 requirements of this section.

26           (2) If the mortgage loan originator is an employee or  
27 exclusive agent of a person subject to this act and that person has



1 provided the commissioner with a surety bond that satisfies the  
2 requirements of this section, the commissioner may accept that  
3 surety bond in lieu of the mortgage loan originator's surety bond  
4 obligation under subsection (1).

5 (3) All of the following apply to a surety bond described in  
6 subsection (1) or (2):

7 (a) A surety bond described in subsection (2) must provide  
8 coverage for each mortgage loan originator covered by that bond in  
9 1 of the following amounts:

10 (i) If the mortgage loan originator did not close any mortgage  
11 loans in the preceding calendar year, or the sum of the principal  
12 amounts of mortgage loans closed by the mortgage loan originator in  
13 the preceding calendar year is less than \$3,000,000.00, as  
14 determined by the commissioner, \$25,000.00.

15 (ii) If the sum of the principal amounts of mortgage loans  
16 closed by the mortgage loan originator in the preceding calendar  
17 year is \$3,000,000.00 or more and less than \$10,000,000.00, as  
18 determined by the commissioner, \$50,000.00.

19 (iii) If the sum of the principal amounts of mortgage loans  
20 closed by the mortgage loan originator in the preceding calendar  
21 year is \$10,000,000.00 or more, as determined by the commissioner,  
22 \$100,000.00.

23 (b) The surety bond shall be in a form as prescribed by the  
24 commissioner.

25 (c) The commissioner may promulgate rules with respect to the  
26 requirements for surety bonds under this section that are necessary  
27 to accomplish the purposes of this act.

1           (4) If an action is commenced on a bond described in this  
2 section, the commissioner may require the filing of a new bond. If  
3 there is a recovery in that action, the mortgage loan originator  
4 shall immediately provide to the commissioner a new surety bond  
5 that meets the requirements of this section.

6           Sec. 31. (1) Except as otherwise provided in section 1512 of  
7 the SAFE act, 12 USC 1511, the requirements of the freedom of  
8 information act, 1976 PA 442, MCL 15.231 to 15.246, or any federal  
9 law concerning the privacy or confidentiality of any information or  
10 material provided to the nationwide mortgage licensing system and  
11 registry, and any privilege arising under federal or state law or  
12 the rules of any federal or state court concerning that information  
13 or material shall continue to apply to that information or material  
14 after the information or material is disclosed to the nationwide  
15 mortgage licensing system and registry. Any information or material  
16 described in this section may be shared with any state and federal  
17 regulatory official with mortgage industry oversight authority  
18 without the loss of privilege or the loss of confidentiality  
19 protections provided by federal law or the freedom of information  
20 act, 1976 PA 442, MCL 15.231 to 15.246.

21           (2) For purposes of this section, the commissioner may enter  
22 into agreements or sharing arrangements with other governmental  
23 agencies, the conference of state bank supervisors, the American  
24 association of residential mortgage regulators, or other  
25 associations representing governmental agencies, as established by  
26 rule or order of the commissioner.

27           (3) Any information or material that is subject to a privilege

1 or confidentiality under subsection (1) shall not be subject to any  
2 of the following:

3 (a) Disclosure under any federal or state law governing the  
4 disclosure to the public of information held by an officer or an  
5 agency of the federal government or the respective state.

6 (b) Subpoena or discovery, or admission into evidence, in any  
7 private civil action or administrative process, unless with respect  
8 to any privilege held by the nationwide mortgage licensing system  
9 and registry with respect to the information or material, the  
10 person to which the information or material pertains waives, in  
11 whole or in part, in that person's discretion, that privilege.

12 (4) This section does not apply to any information or material  
13 relating to the employment history of, and publicly adjudicated  
14 disciplinary and enforcement actions against, a mortgage loan  
15 originator that is included in the nationwide mortgage licensing  
16 system and registry for access by the public.

17 Sec. 33. (1) In addition to any authority provided under this  
18 act, the commissioner may conduct any of the following  
19 investigations and examinations:

20 (a) For purposes of initial licensing, license renewal,  
21 license suspension, license conditioning, license revocation or  
22 termination, or general or specific inquiry or investigation to  
23 determine compliance with this act, the commissioner may access,  
24 receive, and use any books, accounts, records, files, documents,  
25 information, or evidence, including, but not limited to, any of the  
26 following:

27 (i) Criminal, civil, and administrative history information.

1           (ii) Personal history and experience information, including  
2 independent credit reports obtained from a consumer reporting  
3 agency, as defined in 603 of the fair credit reporting act, 15 USC  
4 1681a.

5           (iii) Any other documents, information, or evidence the  
6 commissioner considers relevant to the inquiry or investigation,  
7 regardless of the location, possession, control, or custody of  
8 those documents, information, or evidence.

9           (b) For purposes of investigating violations or complaints  
10 arising under this act, or for the purposes of examination, the  
11 commissioner may review, investigate, or examine any licensed  
12 mortgage loan originator or other person subject to this act as  
13 often as necessary in order to carry out the purposes of this act.  
14 The commissioner may direct, subpoena, or order the attendance of  
15 and examine under oath any person whose testimony may be required  
16 about the loans or the business or subject matter of that  
17 examination or investigation and may direct, subpoena, or order  
18 that person to produce books, accounts, records, files, and any  
19 other documents that the commissioner considers relevant to the  
20 inquiry.

21           (2) Each licensed mortgage loan originator or other person  
22 subject to this act shall make available to the commissioner on  
23 request the books and records relating to the operations of that  
24 licensed mortgage loan originator or other person. The commissioner  
25 shall have access to those books and records and may interview the  
26 officers, principals, mortgage loan originators, employees,  
27 independent contractors, agents, and customers of the licensed

1 mortgage loan originator or other person concerning the business of  
2 the licensed mortgage loan originator or other person.

3 (3) Each licensed mortgage loan originator or other person  
4 subject to this act shall make or compile reports or prepare other  
5 information requested by the commissioner in order to carry out the  
6 purposes of this section, including, but not limited to, any of the  
7 following:

8 (a) Accounting compilations.

9 (b) Information lists and data concerning loan transactions,  
10 in a format prescribed by the commissioner.

11 (c) Any other information the commissioner considers necessary  
12 to carry out the purposes of this section.

13 (4) In making any examination or investigation authorized by  
14 this act, the commissioner may control access to any documents and  
15 records of the licensed mortgage loan originator or other person  
16 under examination or investigation. The commissioner may take  
17 possession of the documents and records or place a person in  
18 exclusive charge of the documents and records in the place where  
19 they are usually kept.

20 (5) If the commissioner is controlling access to documents or  
21 records under subsection (4), a person shall not remove or attempt  
22 to remove any of the documents and records except pursuant to a  
23 court order or with the consent of the commissioner. Unless the  
24 commissioner has reasonable grounds to believe that the documents  
25 or records of the licensed mortgage loan originator or other person  
26 have been or are at risk of being altered or destroyed for purposes  
27 of concealing a violation of this act, the licensed mortgage loan

1 originator or other person or the owner of the documents and  
2 records shall have access to the documents or records as necessary  
3 to conduct its ordinary business affairs.

4 (6) For purposes of this section, the commissioner may do any  
5 of the following:

6 (a) Retain attorneys, accountants, or other professionals and  
7 specialists as examiners, auditors, or investigators to conduct or  
8 assist in the conduct of examinations or investigations.

9 (b) Enter into agreements or relationships with other  
10 government officials or regulatory associations in order to improve  
11 efficiencies and reduce regulatory burden by sharing resources,  
12 standardized or uniform methods or procedures, and documents,  
13 records, information, or evidence obtained under this section.

14 (c) Use, hire, contract, or employ public or privately  
15 available analytical systems, methods, or software to examine or  
16 investigate a licensed mortgage loan originator or other person  
17 subject to this act.

18 (d) Accept and rely on examination or investigation reports  
19 made by other state or federal government officials.

20 (e) Accept audit reports prepared by an independent certified  
21 public accountant for the licensed mortgage loan originator or  
22 other person subject to this act in the course of that part of the  
23 examination covering the same general subject matter as the audit  
24 and incorporate the audit report in the report of the examination,  
25 report of investigation, or other writing of the commissioner.

26 (7) The commissioner's authority under this section remains in  
27 effect whether a licensed mortgage loan originator or other person

1 subject to this act acts or claims to act under any licensing or  
2 registration law of this state or claims to act without that  
3 authority.

4 (8) A licensed mortgage loan originator or other person  
5 subject to investigation or examination under this section shall  
6 not knowingly withhold, abstract, remove, mutilate, destroy, or  
7 secrete any books, records, computer records, or other information  
8 from the commissioner.

9 Sec. 35. A licensed mortgage loan originator shall not do any  
10 of the following:

11 (a) Engage in fraud, deceit, or material misrepresentation in  
12 connection with any transaction governed by this act.

13 (b) Intentionally, or due to gross or wanton negligence,  
14 repeatedly fail to provide borrowers with any material disclosures  
15 of information required by law.

16 (c) Directly or indirectly make a false, misleading, or  
17 deceptive advertisement regarding mortgage loans or the  
18 availability of mortgage loans.

19 (d) Suppress or withhold from the commissioner any information  
20 that he or she possesses and that, if submitted, would have made  
21 him or her ineligible for licensure or license renewal under this  
22 act at the time of application and would have allowed the  
23 commissioner to refuse to license him or her.

24 (e) Be convicted of, or plead no contest to, any of the  
25 following:

26 (i) A misdemeanor involving embezzlement, forgery, fraud, money  
27 laundering, a financial transaction, or securities.

1           (ii) A felony.

2           (f) Refuse or fail to furnish any information or make any  
3 report required by the commissioner to issue or renew a license  
4 under this act, or otherwise required by the commissioner, within a  
5 reasonable period of time, as determined by the commissioner, after  
6 requested by the commissioner.

7           Sec. 37. A licensed mortgage loan originator, or employer or  
8 principal of a licensed mortgage loan originator on his or her  
9 behalf, shall submit to the nationwide mortgage licensing system  
10 and registry reports of condition. The reports of condition shall  
11 be in the form and shall contain the information required by the  
12 nationwide mortgage licensing system and registry.

13           Sec. 39. (1) Subject to section 31, the commissioner shall  
14 regularly report violations of this act, and enforcement actions  
15 and other relevant information, to the nationwide mortgage  
16 licensing system and registry.

17           (2) The commissioner shall comply with the administrative  
18 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in  
19 promulgating any rules under this act.

20           Sec. 41. The unique identifier of any person originating a  
21 residential mortgage loan in this state shall be clearly shown on  
22 all residential mortgage loan application forms, solicitations, or  
23 advertisements, including business cards or websites, and any other  
24 documents, as established by rule or order of the commissioner.

25           Enacting section 1. This act takes effect July 31, 2009.

26           Enacting section 2. This act does not take effect unless all  
27 of the following bills of the 95th Legislature are enacted into



1 law:

2 (a) Senate Bill No. 463.

3

4 (b) Senate Bill No. 464.

5

6 (c) Senate Bill No. 465.

7