

**SUBSTITUTE FOR
SENATE BILL NO. 462**

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

1 section 3 of the federal deposit insurance act, 12 USC 1813, or a
2 credit union.

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

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

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

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

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

18 (f) "Financial licensing acts" means that term as defined in
19 section 2 of the consumer financial services act, 1988 PA 161, MCL
20 487.2052.

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

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

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

1 (j) "Loan modification activities" means any of the following:

2 (i) Collecting or receiving payments, including payments of
3 principal, interest, escrow amounts, and other amounts due, on
4 existing residential mortgage loans due and owing to a mortgagor or
5 mortgage servicer, when the borrower is in default or in reasonably
6 foreseeable likelihood of default.

7 (ii) Working with a borrower described in subparagraph (i) to
8 collect data concerning the borrower's residential mortgage loan or
9 loans.

10 (iii) Making any decisions necessary to modify, either
11 temporarily or permanently, certain terms of the residential
12 mortgage loan or loans of a borrower described in subparagraph (i)
13 or to otherwise finalize collection through the foreclosure
14 process. These decisions may include changing the principal amount,
15 the rate of annual interest charged, or the term of a residential
16 mortgage loan; waiving any fees or charges, including late charges,
17 a borrower is obligated to pay; deferring residential mortgage loan
18 payments; or making similar adjustments to a borrower's residential
19 mortgage loan or the borrower's obligations under the loan.

20 (k) "Loan processor or underwriter" means an individual who
21 performs clerical or support duties as an employee at the direction
22 of and subject to the supervision and instruction of a person
23 licensed or designated as exempt from licensing under the mortgage
24 brokers, lenders, and servicers licensing act, 1987 PA 173, MCL
25 445.1651 to 445.1684; the secondary mortgage loan act, 1981 PA 125,
26 MCL 493.51 to 493.81; or the consumer financial services act, 1988
27 PA 161, MCL 487.2051 to 487.2072. For purposes of this subdivision,

1 "clerical or support duties" may include any of the following after
2 an application is received:

3 (i) The receipt, collection, distribution, and analysis of
4 information common for the processing or underwriting of a
5 residential mortgage loan.

6 (ii) Communicating with a consumer to obtain the information
7 necessary for the processing or underwriting of a loan, to the
8 extent that the communication does not include offering or
9 negotiating loan rates or terms, or counseling consumers about
10 residential mortgage loan rates or terms.

11 (l) "Mortgage loan originator" means an individual who meets
12 all of the following:

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

15 (A) Takes a residential mortgage loan application.

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

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

19 (iii) Is not a person who only performs real estate brokerage
20 activities and is licensed or registered under the laws of this
21 state, unless the person is compensated by a lender, a mortgage
22 broker, or other mortgage loan originator or by any agent of a
23 lender, mortgage broker, or other mortgage loan originator.

24 (iv) Is not a person solely involved in extensions of credit
25 relating to timeshare plans, as that term is defined in 11 USC
26 101(53D).

27 (m) "Mortgage servicer" means a person who directly or

1 indirectly services or offers to service residential mortgage
2 loans.

3 (n) "Nationwide mortgage licensing system and registry" means
4 a mortgage licensing system developed and maintained by the
5 conference of state bank supervisors and the American association
6 of residential mortgage regulators for the licensing and
7 registration of licensed mortgage loan originators.

8 (o) "Nontraditional mortgage product" means any mortgage
9 product other than a 30-year fixed rate mortgage.

10 (p) "Person" means an individual, corporation, limited
11 liability company, partnership, association, or other legal entity.

12 (q) "Real estate brokerage activity" means any activity that
13 involves offering or providing real estate brokerage services to
14 the public, including, but not limited to, any of the following:

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

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

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

23 (iv) Engaging in any activity for which a person engaged in the
24 activity is required to be registered or licensed as a real estate
25 agent or real estate broker under any applicable law.

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

1 (r) "Registered mortgage loan originator" means an individual
2 who meets all of the following:

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

5 (A) A depository institution.

6 (B) A subsidiary of a depository institution that is owned and
7 controlled by that depository institution and is regulated by a
8 federal banking agency.

9 (C) An institution regulated by the farm credit
10 administration.

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

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

18 (t) "Residential real estate" means any real property located
19 in this state on which a person has constructed or intends to
20 construct a dwelling.

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

24 (v) "Service" means the collection or remittance for a lender,
25 noteowner, or noteholder or a person's own account of 4 or more
26 installment payments of the principal of, interest of, or an amount
27 placed in escrow under a residential mortgage loan, mortgage

1 servicing agreement, or an agreement with a mortgagor.

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

5 Sec. 5. (1) Subject to subsection (5), unless specifically
6 exempted under subsection (2), beginning July 31, 2010, an
7 individual shall not engage in the business of a mortgage loan
8 originator with respect to any dwelling located in this state
9 without first obtaining and maintaining annually a license under
10 this act. Each licensed mortgage loan originator must register with
11 and maintain a valid unique identifier issued by the nationwide
12 mortgage licensing system and registry.

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

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

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

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

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

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

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

13 (5) An individual engaged in the business of a mortgage loan
14 originator is not required to obtain and maintain a license under
15 this act until July 31, 2011 if that individual is employed
16 exclusively by a mortgage servicer; if that individual is
17 authorized to perform loan modification activities concerning
18 existing residential mortgage loans, and not to originate new
19 residential mortgage loans or perform any other activities of a
20 mortgage loan originator, on behalf of that mortgage servicer; and
21 if this extension of time is not inconsistent with any guideline,
22 rule, regulation, or interpretative letter of the United States
23 department of housing and urban development concerning the
24 interpretation of the SAFE act and its applicability to loan
25 modification activities.

26 Sec. 7. (1) An applicant for a license under this act shall
27 apply in a form as prescribed by the commissioner. The applicant

1 shall include with the application the fee required under section
2 19 and the criminal history check required under subsection (2).
3 Each application form shall contain the content established by
4 rule, instruction, or procedure of the commissioner. The
5 commissioner may change or update the application form and its
6 contents as necessary by the commissioner in order to carry out the
7 purposes of this act.

8 (2) A person that employs or offers to employ, or engages or
9 offers to engage as an agent, an individual as a mortgage loan
10 originator, to originate mortgage loans on or after July 31, 2010,
11 shall conduct a criminal history check of that individual and the
12 applicant shall submit the results of that criminal history check
13 with his or her application for license. All of the following apply
14 to the criminal history check of an individual required under this
15 subsection:

16 (a) The federal bureau of investigation shall perform the
17 criminal history check.

18 (b) The individual who is the subject of the criminal history
19 check shall have his or her fingerprints taken by a law enforcement
20 agency or by another person that the commissioner determines is
21 qualified to take fingerprints; shall pay the agency or person the
22 fees as required by the federal bureau of investigation for
23 processing fingerprints and completing a criminal history check;
24 and shall request that the agency or person forward the
25 fingerprints and appropriate fee to the federal bureau of
26 investigation for a national criminal history check.

27 (c) After receiving a proper request and the required fees

1 under this subsection, the federal bureau of investigation shall
2 conduct the criminal history check and provide the commissioner and
3 the applicant with the results of the criminal history check. The
4 results shall contain any criminal history record information
5 concerning the individual maintained by the federal bureau of
6 investigation's criminal history check.

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

11 (3) The commissioner is authorized to establish relationships
12 or contracts with the nationwide mortgage licensing system and
13 registry or other entities designated by the nationwide mortgage
14 licensing system and registry to collect and maintain records and
15 process transaction fees or other fees related to licensed mortgage
16 loan originators or other persons subject to this act.

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

22 (a) The results of the criminal history check conducted under
23 subsection (2).

24 (b) The applicant's personal history and experience in a form
25 prescribed by the nationwide mortgage licensing system and
26 registry, including the submission of authorization for the
27 nationwide mortgage licensing system and registry and the

1 commissioner to obtain all of the following concerning the
2 applicant:

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

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

8 (5) For the purposes of this section, the commissioner may use
9 the nationwide mortgage licensing system and registry for any of
10 the following:

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

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

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

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

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

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

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

4 (ii) At any time preceding the date of the license application,
5 any felony or misdemeanor involving fraud, dishonesty, or a breach
6 of trust, money laundering, embezzlement, forgery, a financial
7 transaction, or securities.

8 (d) The applicant has demonstrated financial responsibility,
9 character, and general fitness that commands the confidence of the
10 community and warrants a determination that the mortgage loan
11 originator will operate honestly, fairly, and efficiently within
12 the purposes of this act.

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

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

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

19 (2) The commissioner shall not consider a conviction for which
20 a pardon was granted a conviction for purposes of subsection
21 (1)(c).

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

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

27 (b) Three hours of ethics, including instruction on fraud,

1 consumer protection, and fair lending issues.

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

4 (2) Only prelicensing education courses reviewed and approved
5 by the nationwide mortgage licensing system and registry may be
6 used to satisfy the requirements of subsection (1). Review and
7 approval of a prelicensing education course shall include review
8 and approval of the course provider.

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

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

17 (5) If a person completes any prelicensing education
18 requirements described in subsection (1)(a), (b), or (c) that are
19 approved by the nationwide mortgage licensing system and registry
20 for any state, the commissioner shall accept those hours of
21 education as credit toward completion of the prelicensing education
22 requirements under this section.

23 (6) For an application for a mortgage loan originator license
24 submitted before July 31, 2010, completion of the classroom
25 instruction requirement described in section 2a(4)(d) of the
26 mortgage brokers, lenders, and servicers licensing act, 1987 PA
27 173, MCL 445.1652a, or section 2a(4)(d) of the secondary mortgage

1 loan act, 1981 PA 125, MCL 493.52a, satisfies the prelicensing
2 education requirement described in subsection (1). An applicant
3 described in this subsection shall provide proof in the form of a
4 certificate of completion or other evidence acceptable to the
5 commissioner.

6 (7) If an unlicensed individual who formerly held a license
7 issued under this act applies for a new license under this act, he
8 or she must prove that he or she completed all of the continuing
9 education requirements of section 17 for the year in which the
10 previous license was last held to be eligible for a new or renewed
11 license.

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

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

22 (a) Ethics.

23 (b) Federal law and regulation pertaining to mortgage
24 origination and to mortgage lending, including, but not limited to,
25 fraud, consumer protection, and fair lending issues and the
26 nontraditional mortgage marketplace.

27 (c) State law and regulation pertaining to mortgage

1 origination and to mortgage lending, including, but not limited to,
2 fraud, consumer protection, and fair lending issues and the
3 nontraditional mortgage marketplace.

4 (3) If the test provider is approved by the nationwide
5 mortgage licensing system and registry, the test provider may
6 provide a test at the location of the employer of the applicant,
7 the location of any subsidiary or affiliate of the employer of the
8 applicant, or the location of any entity with which the applicant
9 holds an exclusive arrangement to conduct the business of a
10 mortgage loan originator.

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

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

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

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

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

24 (5) If an applicant for a mortgage loan originator license has
25 met the testing requirement described in section 2a(4)(e) of the
26 mortgage brokers, lenders, and servicers licensing act, 1987 PA
27 173, MCL 445.1652a, or section 2a(4)(e) of the secondary mortgage

1 loan act, 1981 PA 125, MCL 493.52a, in the 5-year period preceding
2 the date of the application, and provides evidence acceptable to
3 the commissioner that he or she met that testing requirement, the
4 applicant is considered to have met that part of the written test
5 requirement under section 9(1)(f) applicable to the state law and
6 regulation described in subsection (2)(c).

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

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

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

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

16 (2) If a mortgage loan originator fails to satisfy the
17 requirements of subsection (1) for renewal of his or her license,
18 the license shall expire. The commissioner may adopt procedures for
19 the reinstatement of expired licenses consistent with the standards
20 established by the nationwide mortgage licensing system and
21 registry.

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

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

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

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

5 (2) Only continuing education courses reviewed and approved by
6 the nationwide mortgage licensing system and registry, based on
7 reasonable standards, may be used to satisfy the requirements of
8 subsection (1). Review and approval of a continuing education
9 course shall include review and approval of the course provider.

10 (3) If approved by the nationwide mortgage licensing system
11 and registry, a continuing education course may be provided by the
12 employer of the mortgage loan originator, an entity that is
13 affiliated with the mortgage loan originator by an agency contract,
14 or a subsidiary or affiliate of that employer or entity.

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

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

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

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

26 (6) A licensed mortgage loan originator who is an approved
27 instructor of an approved continuing education course may receive

1 credit for the licensed mortgage loan originator's own annual
2 continuing education requirement at the rate of 2 hours credit for
3 every 1 hour taught.

4 (7) If a person successfully completes any continuing
5 education requirements described in subsection (1)(a), (b), or (c)
6 that are approved by the nationwide mortgage licensing system and
7 registry for any state, the commissioner shall accept those hours
8 of education as credit toward completion of the continuing
9 education requirements under this section.

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

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

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

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

27 (a) An annual fee for each licensed mortgage loan originator

1 in an amount established by the commissioner. For purposes of this
2 subdivision, the commissioner shall establish an amount for the
3 annual fee that is sufficient to defray the estimated cost of
4 administering and enforcing the provisions of this act.

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

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

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

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

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

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

26 (7) Money received from the fees described in this section
27 shall be deposited in the MBLSLA fund. As used in this subsection,

1 "MBLSLA fund" means the restricted account created under section
2 8(8) of the mortgage brokers, lenders, and servicers licensing act,
3 1987 PA 173, MCL 445.1658.

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

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

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

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

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

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

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

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

27 (c) The setting or resetting as necessary of renewal or

1 reporting dates.

2 (d) Requirements for amending or surrendering a license or any
3 other activities that the commissioner considers necessary for
4 participation in the nationwide mortgage licensing system and
5 registry.

6 Sec. 23. The commissioner shall establish a process through
7 which mortgage loan originators may challenge information entered
8 into the nationwide mortgage licensing system and registry by the
9 commissioner.

10 Sec. 25. (1) To ensure the effective supervision and
11 enforcement of this act, the commissioner may do any of the
12 following, in a manner consistent with the requirements of the
13 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
14 24.328:

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

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

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

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

27 (e) Issue any of the following orders or directives under this

1 act:

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

5 (ii) Order or direct a person that is subject to this act to
6 cease any harmful activities or violations of this act, including
7 an immediate temporary order to cease and desist.

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

13 (iv) Issue an order under section 27.

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

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

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

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

27 Sec. 27. (1) If in the opinion of the commissioner an

1 individual has engaged in fraud, the commissioner may serve on that
2 person a written notice of intention to prohibit that individual
3 from being licensed under this act, licensed or registered under
4 any of the financial licensing acts, or employed by, an agent of,
5 or a control person of a licensee or registrant under any of the
6 financial licensing acts.

7 (2) A notice issued under subsection (1) shall contain a
8 statement of the facts supporting the prohibition and, except as
9 provided under subsection (7), shall set a hearing on a date within
10 60 days after the date of the notice. If the individual does not
11 appear at the hearing, he or she is considered to have consented to
12 the issuance of an order in accordance with the notice.

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

20 (4) An order issued under subsection (2) or (3) is effective
21 when served on an individual. The commissioner shall also serve a
22 copy of the order upon the licensee of which the individual is an
23 employee or agent. The order remains in effect until it is stayed,
24 modified, terminated, or set aside by the commissioner or a
25 reviewing court.

26 (5) After 5 years from the date of an order issued under
27 subsection (2) or (3), the individual subject to the order may

1 apply to the commissioner to terminate the order.

2 (6) If the commissioner considers that an individual served a
3 notice under subsection (1) poses an imminent threat of financial
4 loss to customers, the commissioner may serve on that individual an
5 order of suspension from being employed by, an agent of, or a
6 control person of a licensee or registrant under any of the
7 financial licensing acts. The suspension is effective on the date
8 the order is issued and, unless stayed by a court, remains in
9 effect until the commissioner completes the review required under
10 this section and the commissioner has dismissed the charges
11 specified in the order.

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

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

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

1 (10) Within 30 days after the commissioner has notified the
2 parties that the case has been submitted to him or her for final
3 decision, the commissioner shall render a decision that includes
4 findings of fact supporting the decision and serve on each party to
5 the proceeding a copy of the decision and an order consistent with
6 the decision.

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

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

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

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

25 (15) As used in this section, "fraud" includes actionable
26 fraud, actual or constructive fraud, criminal fraud, extrinsic or
27 intrinsic fraud, fraud in the execution, in the inducement, in

1 fact, or in law, or any other form of fraud.

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

5 (2) If the mortgage loan originator is an employee or
6 exclusive agent of a person subject to this act and that person has
7 provided the commissioner with a surety bond that satisfies the
8 requirements of this section, the commissioner may accept that
9 surety bond in lieu of the mortgage loan originator's surety bond
10 obligation under subsection (1).

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

13 (a) A surety bond described in subsection (2) must provide
14 coverage for each mortgage loan originator covered by that bond in
15 1 of the following amounts:

16 (i) If the mortgage loan originator did not close any mortgage
17 loans in the preceding calendar year, or the sum of the principal
18 amounts of mortgage loans closed by the mortgage loan originator in
19 the preceding calendar year is less than \$12,000,000.00, as
20 determined by the commissioner, \$10,000.00.

21 (ii) If the sum of the principal amounts of mortgage loans
22 closed by the mortgage loan originator in the preceding calendar
23 year is \$12,000,000.00 or more and less than \$24,000,000.00, as
24 determined by the commissioner, \$25,000.00.

25 (iii) If the sum of the principal amounts of mortgage loans
26 closed by the mortgage loan originator in the preceding calendar
27 year is \$24,000,000.00 or more, as determined by the commissioner,

1 \$50,000.00.

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

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

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

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

27 (2) For purposes of this section, the commissioner may enter

1 into agreements or sharing arrangements with other governmental
2 agencies, the conference of state bank supervisors, the American
3 association of residential mortgage regulators, or other
4 associations representing governmental agencies, as established by
5 rule or order of the commissioner.

6 (3) Any information or material that is subject to a privilege
7 or confidentiality under subsection (1) shall not be subject to any
8 of the following:

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

12 (b) Subpoena or discovery, or admission into evidence, in any
13 private civil action or administrative process, unless with respect
14 to any privilege held by the nationwide mortgage licensing system
15 and registry with respect to the information or material, the
16 person to which the information or material pertains waives, in
17 whole or in part, in that person's discretion, that privilege.

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

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

26 (a) For purposes of initial licensing, license renewal,
27 license suspension, license conditioning, license revocation or

1 termination, or general or specific inquiry or investigation to
2 determine compliance with this act, the commissioner may access,
3 receive, and use any books, accounts, records, files, documents,
4 information, or evidence, including, but not limited to, any of the
5 following:

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

7 (ii) Personal history and experience information, including
8 independent credit reports obtained from a consumer reporting
9 agency, as defined in 603 of the fair credit reporting act, 15 USC
10 1681a.

11 (iii) Any other documents, information, or evidence the
12 commissioner considers relevant to the inquiry or investigation,
13 regardless of the location, possession, control, or custody of
14 those documents, information, or evidence.

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

27 (2) Each licensed mortgage loan originator or other person

1 subject to this act shall make available to the commissioner on
2 request the books and records relating to the operations of that
3 licensed mortgage loan originator or other person. The commissioner
4 shall have access to those books and records and may interview the
5 officers, principals, mortgage loan originators, employees,
6 independent contractors, agents, and customers of the licensed
7 mortgage loan originator or other person concerning the business of
8 the licensed mortgage loan originator or other person.

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

14 (a) Accounting compilations.

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

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

19 (4) In making any examination or investigation authorized by
20 this act, the commissioner may control access to any documents and
21 records of the licensed mortgage loan originator or other person
22 under examination or investigation. The commissioner may take
23 possession of the documents and records or place a person in
24 exclusive charge of the documents and records in the place where
25 they are usually kept.

26 (5) If the commissioner is controlling access to documents or
27 records under subsection (4), a person shall not remove or attempt

1 to remove any of the documents and records except pursuant to a
2 court order or with the consent of the commissioner. Unless the
3 commissioner has reasonable grounds to believe that the documents
4 or records of the licensed mortgage loan originator or other person
5 have been or are at risk of being altered or destroyed for purposes
6 of concealing a violation of this act, the licensed mortgage loan
7 originator or other person or the owner of the documents and
8 records shall have access to the documents or records as necessary
9 to conduct its ordinary business affairs.

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

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

15 (b) Enter into agreements or relationships with other
16 government officials or regulatory associations in order to improve
17 efficiencies and reduce regulatory burden by sharing resources,
18 standardized or uniform methods or procedures, and documents,
19 records, information, or evidence obtained under this section.

20 (c) Use, hire, contract, or employ public or privately
21 available analytical systems, methods, or software to examine or
22 investigate a licensed mortgage loan originator or other person
23 subject to this act.

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

26 (e) Accept audit reports prepared by an independent certified
27 public accountant for the licensed mortgage loan originator or

1 other person subject to this act in the course of that part of the
2 examination covering the same general subject matter as the audit
3 and incorporate the audit report in the report of the examination,
4 report of investigation, or other writing of the commissioner.

5 (7) The commissioner's authority under this section remains in
6 effect whether a licensed mortgage loan originator or other person
7 subject to this act acts or claims to act under any licensing or
8 registration law of this state or claims to act without that
9 authority.

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

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

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

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

22 (c) Directly or indirectly make a false, misleading, or
23 deceptive advertisement regarding mortgage loans or the
24 availability of mortgage loans.

25 (d) Suppress or withhold from the commissioner any information
26 that he or she possesses and that, if submitted, would have made
27 him or her ineligible for licensure or license renewal under this

1 act at the time of application and would have allowed the
2 commissioner to refuse to license him or her.

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

5 (i) A misdemeanor involving fraud, dishonesty, or a breach of
6 trust, money laundering, embezzlement, forgery, a financial
7 transaction, or securities.

8 (ii) A felony.

9 (f) Refuse or fail to furnish any information or make any
10 report required by the commissioner to issue or renew a license
11 under this act, or otherwise required by the commissioner, within a
12 reasonable period of time, as determined by the commissioner, after
13 requested by the commissioner.

14 Sec. 37. A licensed mortgage loan originator, or employer or
15 principal of a licensed mortgage loan originator on his or her
16 behalf, shall submit to the nationwide mortgage licensing system
17 and registry reports of condition. The reports of condition shall
18 be in the form and shall contain the information required by the
19 nationwide mortgage licensing system and registry.

20 Sec. 39. (1) Subject to section 31, the commissioner shall
21 regularly report violations of this act, and enforcement actions
22 and other relevant information, to the nationwide mortgage
23 licensing system and registry.

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

27 Sec. 41. The unique identifier of any person originating a

1 residential mortgage loan in this state shall be clearly shown on
2 all residential mortgage loan application forms, solicitations, or
3 advertisements, including business cards or websites, and any other
4 documents, as established by rule or order of the commissioner.

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

6 Enacting section 2. This act does not take effect unless all
7 of the following bills of the 95th Legislature are enacted into
8 law:

9 (a) Senate Bill No. 463.

10 (b) Senate Bill No. 464.

11 (c) Senate Bill No. 465.