

SENATE BILL No. 463

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

A bill to amend 1987 PA 173, entitled "Mortgage brokers, lenders, and servicers licensing act," by amending the title and sections 1a, 2, 8, 10, 11, 12, 14, 29, and 33 (MCL 445.1651a, 445.1652, 445.1658, 445.1660, 445.1661, 445.1662, 445.1664, 445.1679, and 445.1683), the title and section 1a as amended by 2008 PA 66, section 2 as amended by 2008 PA 328, section 8 as amended by 2008 PA 326, section 10 as amended by 2008 PA 69, sections 11 and 12 as amended by 2008 PA 62, section 14 as amended by 2008 PA 63, section 29 as amended by 2008 PA 529, and section 33 as amended by 2008 PA 324; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to define and regulate mortgage brokers, mortgage

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1 lenders, and mortgage servicers; ~~and their loan officers;~~ to
2 prescribe the powers and duties of certain public officers and
3 agencies; to provide for the promulgation of rules; and to provide
4 remedies and penalties.

5 Sec. 1a. As used in this act:

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

10 (b) "Board" means the mortgage industry advisory board created
11 in section 33.

12 (c) "Commissioner" means the commissioner of the office of
13 financial and insurance ~~services~~ **REGULATION** of the department of
14 **ENERGY**, labor, and economic growth or his or her authorized agent.

15 (d) "Construction loan" means a mortgage loan to construct a
16 1-to-4 family dwelling, that is approved and closed before
17 completion of the construction of the improvement on the real
18 property.

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

24 (f) "Depository financial institution" means a state or
25 nationally chartered bank, a state or federally chartered savings
26 and loan association, savings bank, or credit union, or an entity
27 of the federally chartered farm credit system.

1 (G) "EMPLOYEE" MEANS AN INDIVIDUAL WHO MEETS BOTH OF THE
2 FOLLOWING:

3 (i) HAS A EMPLOYMENT RELATIONSHIP ACKNOWLEDGED BY THAT
4 INDIVIDUAL AND THE LICENSEE OR REGISTRANT THAT ENGAGES THAT
5 INDIVIDUAL TO ORIGINATE MORTGAGE LOANS.

6 (ii) IS TREATED AS AN EMPLOYEE BY THE LICENSEE OR REGISTRANT
7 THAT ENGAGES THAT INDIVIDUAL TO ORIGINATE MORTGAGE LOANS FOR
8 COMPLIANCE WITH FEDERAL INCOME TAX LAWS.

9 (H) ~~(g)~~—"Executive officer" means an officer, member, or
10 partner of a licensee or registrant. The term includes the chief
11 executive officer, president, vice president, chief financial
12 officer, controller, or compliance officer or an individual holding
13 any other similar position.

14 (I) ~~(h)~~—"Financial licensing act" means the consumer financial
15 services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the
16 acts listed in section 2 of the consumer financial services act,
17 1988 PA 161, MCL 487.2052.

18 (J) ~~(i)~~—"Firm commitment" means an underwriting in which a
19 broker-dealer commits to buy the mortgage loan or the entire issue
20 of securities based upon or backed by 1 or more mortgage loans and
21 assumes all financial responsibility for any unsold securities.

22 (K) ~~(j)~~—"Individual investor" means a person that resides in
23 this state or has its principal place of business in this state.
24 The term does not include a bank, savings bank, savings and loan
25 association, credit union, trust company, insurance company,
26 investment company as defined in the investment company act of
27 1940, 15 USC 80a-1 to 80a-64, pension or profit sharing plan if the

1 assets of the plan are managed by a bank or trust company or other
 2 institutional manager, financial institution, institutional
 3 manager, broker-dealer that is a member of the New York stock
 4 exchange or registered under the uniform securities act, 1964 PA
 5 265, MCL 451.501 to 451.818, **OR THE UNIFORM SECURITIES ACT (2002),**
 6 **2008 PA 551, MCL 451.2101 TO 451.2703,** the federal national
 7 mortgage association, the government national mortgage association,
 8 the federal home loan mortgage corporation, or a mortgage lender or
 9 mortgage servicer.

10 (I) ~~(k)~~ "License" means a license issued under this act.

11 (M) **"LICENSED LOAN OFFICER" MEANS A LOAN OFFICER WHO IS**
 12 **LICENSED AS A MORTGAGE LOAN ORIGINATOR UNDER THE MORTGAGE LOAN**
 13 **ORIGINATOR LICENSING ACT.**

14 (N) ~~(l)~~ "Licensee" means a person licensed or required to be
 15 licensed under this act.

16 (O) ~~(m)~~ "Loan officer" means an individual who is an employee
 17 or agent of a mortgage broker, mortgage lender, or mortgage
 18 servicer; who originates mortgage loans; and who is not an employee
 19 or agent of a depository financial institution or a subsidiary or
 20 affiliate of a depository financial institution.

21 ~~(n) "Loan officer registrant" means an individual who is~~
 22 ~~currently registered under section 2a.~~

23 (P) ~~(e)~~ "Mortgage broker" means a person who, directly or
 24 indirectly, does 1 or both of the following:

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

27 (ii) Serves or offers to serve as an agent for a person who

1 makes or offers to make mortgage loans.

2 (Q) ~~(p)~~—"Mortgage lender" means a person who, directly or
3 indirectly, makes or offers to make mortgage loans.

4 (R) ~~(q)~~—"Mortgage loan" means a loan secured by a first
5 mortgage on real property located in this state and used, or
6 improved for use, as a dwelling and designed for occupancy by 4 or
7 fewer families or a land contract covering real property located in
8 this state used, or improved for use, as a dwelling and designed
9 for occupancy by 4 or fewer families. A mortgage loan does not
10 include a home improvement installment contract under the home
11 improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

12 (S) ~~(r)~~—"Mortgage servicer" means a person who, directly or
13 indirectly, services or offers to service mortgage loans.

14 (T) ~~(s)~~—"Originate" means any of the following:

15 (i) To negotiate, arrange, or offer to negotiate or arrange a
16 mortgage loan between a mortgage lender and 1 or more individuals.

17 (ii) To place, assist in placing, or find a mortgage loan for 1
18 or more individuals.

19 (U) ~~(t)~~—"Person" means an individual, corporation, limited
20 liability company, partnership, association, governmental entity,
21 or any other legal entity.

22 (V) ~~(u)~~—"Real estate broker" means a broker or associate
23 broker licensed under article 25 of the occupational code, 1980 PA
24 299, MCL 339.2501 to 339.2518.

25 (W) ~~(v)~~—"Real estate salesperson" means a salesperson licensed
26 under article 25 of the occupational code, 1980 PA 299, MCL
27 339.2501 to 339.2518.

1 (X) ~~(w)~~ "Register" means filing a notice with the commissioner
 2 on a form prescribed by the commissioner that notifies the
 3 commissioner of the intent to engage in the activities of a
 4 mortgage broker, mortgage lender, **OR** mortgage servicer ~~, or loan~~
 5 ~~officer in this state~~ and the payment of any fees required under
 6 this act, along with the other documents, proofs, and fees required
 7 by the commissioner.

8 (Y) ~~(x)~~ "Registrant" means a person that is registered under
 9 section 6 or required to register under section 6. ~~The term does~~
 10 ~~not include a loan officer registrant.~~

11 (Z) **"SECONDARY MORTGAGE LOAN ACT" MEANS THE SECONDARY MORTGAGE**
 12 **LOAN ACT, 1981 PA 125, MCL 493.51 TO 493.81.**

13 (AA) ~~(y)~~ "Service" means the collection or remittance, or the
 14 right or obligation to collect or remit, for a lender, noteowner,
 15 noteholder, mortgage servicer, or the licensee's or registrant's
 16 own account of 4 or more installment payments of the principal,
 17 interest, or an amount placed in escrow under a mortgage loan,
 18 mortgage servicing agreement, or an agreement with the mortgagor.

19 Sec. 2. (1) A person shall not act as a mortgage broker,
 20 mortgage lender, or mortgage servicer without first obtaining a
 21 license under this act or registering under section 6, unless 1 or
 22 more of the following apply:

23 (a) The person is providing loan officer services as an
 24 employee or agent of only 1 mortgage broker, mortgage lender, or
 25 mortgage servicer and ~~is registered as a~~ **LICENSED** loan officer
 26 ~~registrant~~ if that ~~registration~~ **LICENSURE** is required under ~~this~~
 27 **THE MORTGAGE LOAN ORIGINATOR LICENSING** act.

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

2 (c) The person is licensed as a class I licensee under the
3 consumer financial services act, 1988 PA 161, MCL 487.2051 to
4 487.2072.

5 (d) The individual is an employee of a professional employer
6 organization, as that term is defined in section 113 of the
7 Michigan business tax act, 2007 PA 36, MCL 208.1113, solely acting
8 as a residential mortgage originator of only 1 mortgage broker or
9 mortgage lender. The mortgage broker or mortgage lender shall do
10 all of the following:

11 (i) Direct and control the activities of the individual under
12 this act.

13 (ii) Be responsible for all activities of the individual and
14 assume responsibility for the individual's actions that are covered
15 by the proof of financial responsibility deposit required under
16 section 4.

17 (2) A person that is licensed to make regulatory loans under
18 the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, or is
19 licensed to make secondary mortgage loans under the secondary
20 mortgage loan act, ~~1981 PA 125, MCL 493.51 to 493.81,~~ and is
21 registered with the commissioner shall file with the commissioner
22 an application for a license under section 3(1) or shall
23 discontinue all activities that are subject to this act.

24 ~~— (3) Unless a residential mortgage originator is otherwise~~
25 ~~licensed or registered under this act, a residential mortgage~~
26 ~~originator shall not receive directly or indirectly any~~
27 ~~compensation, commission, fee, points, or other remuneration or~~

1 ~~benefits from a mortgage broker, mortgage lender, or mortgage~~
2 ~~servicer other than the employer of the residential mortgage~~
3 ~~originator. This subsection does not apply after March 31, 2009.~~

4 (3) ~~(4) Beginning April 1, 2009, a~~ **A** loan officer shall not
5 directly or indirectly receive any compensation, commission, fee,
6 points, or other remuneration or benefits for originating a
7 mortgage loan unless both of the following are met:

8 (a) The loan officer is a **LICENSED** loan officer. ~~registrant.~~

9 (b) The compensation, commission, fee, points, or other
10 remuneration or benefits are paid by the licensee or registrant for
11 which the loan officer originated that mortgage loan.

12 ~~— (5) Unless a residential mortgage originator is otherwise~~
13 ~~licensed or registered under this act, a mortgage broker, mortgage~~
14 ~~lender, or mortgage servicer shall not pay directly or indirectly~~
15 ~~any compensation, commission, fee, points, or other remuneration or~~
16 ~~benefits to a residential mortgage originator other than an~~
17 ~~employee of the mortgage broker, mortgage lender, or mortgage~~
18 ~~servicer. As used in this subsection and subsection (3),~~
19 ~~"residential mortgage originator" means a person who assists~~
20 ~~another person in obtaining a mortgage loan. This subsection does~~
21 ~~not apply after March 31, 2009.~~

22 (4) ~~(6) Beginning April 1, 2009, a~~ **A** mortgage broker, mortgage
23 lender, or mortgage servicer shall not directly or indirectly pay
24 any compensation, commission, fee, points, or other remuneration or
25 benefits to any of the following:

26 (a) A loan officer who is not a **LICENSED** loan officer.
27 ~~registrant.~~

1 (b) A **LICENSED** loan officer ~~registrant~~ who is not an employee
2 or agent of that mortgage broker, mortgage lender, or mortgage
3 servicer.

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

11 (6) ~~(8)~~—Except for a state or nationally chartered bank,
12 savings bank, or an affiliate of a bank or savings bank, the person
13 subject to this act shall not include in its name or assumed name,
14 the words "bank", "banker", "banking", "banc", "bankcorp",
15 "bancorp", or any other words or phrases that would imply that the
16 person is a bank, is engaged in the business of banking, or is
17 affiliated with a bank or savings bank. It is not a violation of
18 this subsection for a licensee or registrant to use the term
19 "mortgage banker" or "mortgage banking" in its name or assumed
20 name. A person subject to this act whose name or assumed name on
21 January 1, 1995 contained a word prohibited by this section may
22 continue to use the name or assumed name.

23 (7) ~~(9)~~—As used in this section, "employee" means that term as
24 defined in section 3401 of the internal revenue code, 26 USC 3401.

25 Sec. 8. (1) At the time of making an initial application for a
26 license under this act, and at the time of making the first
27 application for a license after the suspension or revocation of a

1 license, an applicant for licensure under this act shall pay to the
2 commissioner a fee for investigating the applicant and the minimum
3 annual operating fee established by the commissioner in subsection
4 (3). To renew a license that is not suspended or revoked, the
5 applicant shall only pay to the commissioner the annual operating
6 fee established in subsection (3). At the time of filing a
7 registration or a renewal of a registration, a registrant shall pay
8 to the commissioner an annual operating fee established in
9 subsection (3).

10 (2) If an initial or renewed license or registration described
11 in subsection (1) will have an effective date within 6 months of
12 the expiration date described in section 7, the initial or renewal
13 annual operating fee for that license or registration is 1/2 of the
14 annual operating fee.

15 (3) The commissioner shall annually establish a schedule of
16 fees that are sufficient to pay, but not to exceed, the office of
17 financial and insurance regulation's reasonably anticipated costs
18 of administering and enforcing this act. Subject to subsection (2),
19 the fees are as follows:

20 (a) For the investigation of an applicant for a license, a fee
21 of not less than \$400.00 or more than \$1,000.00.

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

1 December 31 of the previous calendar year. In the 1-year period
2 beginning July 2, 1996, the operating fee shall be not less than
3 \$250.00 and not more than \$2,500.00. Beginning July 2, 1997, in the
4 discretion of the commissioner, subject to the limitation set forth
5 in this subsection, the commissioner may increase the maximum
6 operating fee at an annual rate of not more than 10% in the second,
7 third, and fourth 1-year periods after the 1-year period beginning
8 July 2, 1996, and in the fifth and subsequent years, at an annual
9 rate of not more than the annual increase for the immediately
10 preceding 12-month period in the Detroit consumer price index as
11 reported by the United States department of labor. For purposes of
12 this subdivision, "mortgage loan" includes only mortgage loans
13 subject to this act.

14 (c) For amending or reissuing a license ~~—OR registration, or~~
15 ~~loan officer registration,~~ a fee of not less than \$15.00 or more
16 than \$200.00.

17 (d) A licensee or registrant shall pay the actual travel,
18 lodging, and meal expenses incurred by employees of the office of
19 financial and insurance regulation who travel out of state to
20 examine the records of the licensee or investigate the licensee or
21 registrant and the cost of independent investigators employed under
22 section 20(1)(e).

23 ~~— (e) An annual fee for each loan officer registrant in an~~
24 ~~amount established by the commissioner. For purposes of this~~
25 ~~subdivision, the commissioner shall establish an amount for the~~
26 ~~annual fee that is sufficient to defray the estimated cost of~~
27 ~~administering and enforcing the loan officer registration~~

1 ~~provisions of this act.~~

2 (4) Fees received under this act are not refundable.

3 (5) If any fees or penalties provided for in this act are not
4 paid when required, the attorney general may maintain an action
5 against the delinquent licensee or registrant for the recovery of
6 the fees or penalties together with interest and costs.

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

11 (7) A licensee or registrant whose license or registration
12 renewal fee is not received on or before December 31 is subject to
13 a penalty of \$25.00 for each day the fee is delinquent or
14 \$1,000.00, whichever is less.

15 (8) The department of treasury shall establish and administer
16 a restricted account in the general fund named the MBLSLA fund. The
17 department of treasury shall credit to the account all fees
18 collected under this act or under the commissioner's authority
19 under this act, fees described in section 6a of the secondary
20 mortgage loan act, ~~1981 PA 125, MCL 493.56a,~~ **FEES ESTABLISHED UNDER**
21 **THE MORTGAGE LOAN ORIGINATOR LICENSING ACT**, and money appropriated
22 or received from any source. The department of treasury shall use
23 the money in the account only to provide money to the commissioner
24 to administer and enforce this act, ~~and the secondary mortgage loan~~
25 ~~act, 1981 PA 125, MCL 493.51 to 493.81, AND THE MORTGAGE LOAN~~
26 **ORIGINATOR LICENSING ACT** and to pay other costs associated with the
27 commissioner's regulatory obligations. Money in the account at the

1 end of a state fiscal year shall not revert to the general fund but
2 shall be carried over in the account to the next state fiscal year.

3 (9) The annual operating fee set by the commissioner under
4 subsection (3)(b) shall be based upon information in reports filed
5 under section 21.

6 Sec. 10. (1) A licensee ~~, OR registrant, or loan officer~~
7 ~~registrant~~ may surrender a license ~~, OR registration, or loan~~
8 ~~officer registration~~ by delivering to the commissioner the license
9 ~~, OR registration, or loan officer registration~~ with written
10 notice that the licensee ~~, OR registrant, or loan officer~~
11 ~~registrant~~ surrenders the license ~~, OR registration, or loan~~
12 ~~officer registration~~. The surrender, revocation, or suspension of a
13 license ~~, OR registration, or loan officer registration~~ under this
14 act does not affect the licensee's ~~, OR registrant's, or loan~~
15 ~~officer registrant's~~ civil or criminal liability for acts committed
16 before the surrender, revocation, or suspension. The surrender of a
17 license ~~, OR registration, or loan officer registration~~ does not
18 affect a proceeding to suspend or revoke a license ~~, OR~~
19 ~~registration, or loan officer registration~~.

20 (2) Except as otherwise provided by law, a revocation,
21 suspension, or surrender of a license ~~, OR registration, or loan~~
22 ~~officer registration~~ does not impair or affect the obligation of a
23 preexisting contract between the licensee ~~, OR registrant, or loan~~
24 ~~officer registrant~~ and another person.

25 (3) A licensee ~~, OR registrant, or loan officer registrant~~
26 whose license ~~, OR registration, or loan officer registration~~ has
27 been destroyed or lost may comply with this section by submitting

1 to the commissioner a notarized affidavit of the loss accompanied
2 by written notice that the licensee ~~, OR~~ registrant ~~, or~~ loan
3 ~~officer registrant~~ surrenders the license ~~, OR~~ registration. ~~, or~~
4 ~~loan officer registration.~~

5 Sec. 11. (1) The commissioner shall exercise general
6 supervision and control over mortgage brokers, mortgage lenders,
7 and mortgage servicers doing business in this state. ~~and loan~~
8 ~~officers originating mortgage loans in this state.~~

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

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

15 (b) To deny an application for a license ~~, OR~~ registration. ~~, or~~
16 ~~or loan officer registration.~~

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

20 (d) To advise the attorney general or the prosecuting attorney
21 of a county in which a mortgage broker, mortgage lender, or
22 mortgage servicer is conducting business ~~or in which a loan officer~~
23 ~~resides~~ that the commissioner believes a licensee, registrant, ~~loan~~
24 ~~officer registrant,~~ or other person is violating this act. The
25 attorney general or prosecuting attorney may take appropriate legal
26 action to enjoin the operation of the business of the mortgage
27 broker, mortgage lender, or mortgage servicer ~~or the originating of~~

1 ~~mortgages by the loan officer~~ or prosecute violations of this act.

2 (e) To bring an action in the Ingham county circuit court in
3 the name and on behalf of this state against a licensee,
4 registrant, ~~loan officer registrant,~~ or any other person ~~who~~ **THAT**
5 is participating in, or about to participate in, any unsafe or
6 injurious practice or act in violation of this act or a rule
7 promulgated under this act, to enjoin the person from participating
8 in or continuing the practice or engaging in the act.

9 (f) To order a person to cease and desist from a violation of
10 this act or a rule promulgated under this act under section 16.

11 (g) To suspend or revoke a license ~~,~~ **OR** registration ~~,~~ ~~or loan~~
12 ~~officer registration~~ under section 29.

13 (h) To require that restitution be made under section 29.

14 (i) To assess a civil fine under section 29.

15 (j) To censure a licensee ~~,~~ **OR** registrant. ~~,~~ ~~or loan officer~~
16 ~~registrant.~~

17 (k) To issue an order to prohibit a person from being employed
18 by, an agent of, or control person of a licensee or registrant
19 under section 18a.

20 Sec. 12. (1) The commissioner shall give notice to a licensee
21 ~~,~~ **OR** registrant ~~,~~ ~~or loan officer registrant~~ of intention to enter
22 an order suspending or revoking that person's license ~~,~~ **OR**
23 registration, ~~or loan officer registration,~~ or notice to an
24 applicant of a refusal to issue a license ~~,~~ **OR** registration, ~~or~~
25 ~~loan officer registration,~~ in writing and served personally or sent
26 by certified mail to the licensee, registrant, ~~loan officer~~
27 ~~registrant,~~ or applicant.

1 (2) Within 20 days after the notice of the intention to enter
2 an order suspending or revoking a license ~~, OR~~ registration, ~~or~~
3 ~~loan officer registration,~~ or a refusal to issue a license ~~, OR~~
4 registration ~~, or loan officer registration~~ under subsection (1),
5 the licensee, registrant, ~~loan officer registrant,~~ or applicant may
6 request a hearing to contest the order or refusal. If a hearing
7 regarding suspension or revocation is not requested, the
8 commissioner shall enter a final order regarding the suspension or
9 revocation. A hearing shall be conducted under the provisions of
10 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
11 to 24.328.

12 Sec. 14. All of the following shall apply to an investigation
13 conducted under section 13:

14 (a) The employees or agents of the office of financial and
15 insurance ~~services~~ **REGULATION** shall complete the investigation
16 within a reasonable period of time.

17 (b) If the investigation does not disclose evidence of a
18 violation of this act or a rule promulgated or an order issued
19 under this act, the commissioner shall not use the complaint in any
20 subsequent decision to issue, renew, suspend, or revoke the license
21 ~~or loan officer registration~~ or suspend or revoke the registration
22 of the person against which the complaint was filed. The
23 commissioner shall forward the results of the investigation to the
24 complainant and the person against whom the complaint was filed.

25 (c) In addition to any other action authorized by law, if the
26 investigation discloses evidence of a violation of this act or a
27 rule promulgated or an order issued under this act, the

1 commissioner or the attorney general may prepare a formal complaint
2 to be served on the person against which the allegations are made
3 and shall provide a copy of the formal complaint to the
4 complainant.

5 Sec. 29. (1) An owner, partner, member, officer, director,
6 trustee, employee, agent, broker, or other person, or a
7 representative acting on the authority of that person that
8 willfully or intentionally does any of the following is guilty of a
9 misdemeanor punishable by a fine of not more than \$15,000.00 or
10 imprisonment for not more than 1 year, or both:

11 (a) Engages in this state in the business of a mortgage
12 broker, mortgage lender, or mortgage servicer without a license or
13 registration required under this act or acts as a loan officer in
14 this state ~~without~~ **AND IS NOT** a **LICENSED** loan officer ~~registration~~
15 **IF LICENSURE IS** required under ~~this~~ **THE MORTGAGE LOAN ORIGINATOR**
16 **LICENSING** act.

17 (b) Transfers or assigns a mortgage loan or a security
18 directly representing an interest in 1 or more mortgage loans
19 before the disbursement of 75% or more of the proceeds of the
20 mortgage loan to, or for the benefit of, the borrower. This
21 subdivision does not apply to any of the following:

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

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

26 (iii) A construction loan.

27 (iv) A loan that provides in writing that the loan proceeds

1 shall be disbursed to or for the benefit of the borrower in
2 installments or upon the request of the borrower or upon the
3 completion of renovations or repairs to the dwelling situated on
4 the real property subject to the mortgage loan.

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

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

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

12 (A) The broker-dealer is registered under the uniform
13 securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE UNIFORM**
14 **SECURITIES ACT (2002), 2008 PA 551, MCL 451.2101 TO 451.2703.**

15 (B) The broker-dealer is not an affiliate of the mortgage
16 lender unless the person acquired the broker-dealer registration,
17 directly or indirectly, before September 1, 1987 under the uniform
18 securities act, 1964 PA 265, MCL 451.501 to 451.818, was affiliated
19 with a mortgage lender before September 1, 1987, and has
20 continuously maintained that registration subsequent to September
21 1, 1987. For purposes of this subparagraph, if an aggregate of more
22 than 10% of the outstanding voting stock or interest in a
23 corporation, unincorporated organization, partnership, or other
24 legal entity that is a broker-dealer or mortgage lender is sold,
25 transferred, assigned, or otherwise conveyed subsequent to
26 September 1, 1987, the registration is not considered to have been
27 continuously maintained.

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

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

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

10 (B) An individual who, after the purchase, has an investment
11 of more than \$50,000.00 in mortgage loans or securities
12 representing an interest in 1 or more mortgage loans, including
13 installment payments to be made within 1 year after purchase by the
14 individual, has either personal income before taxes in excess of
15 \$100,000.00 for his or her last fiscal year or latest 12-month
16 period and is capable of bearing the economic risk, or net worth in
17 excess of \$1,000,000.00, and has the knowledge and experience in
18 financial and business matters that he or she is capable of
19 evaluating the merits and risks of the prospective investment, or
20 has obtained the advice of an attorney, certified public
21 accountant, or investment adviser registered under the investment
22 advisers act of 1940, or an investment adviser registered under the
23 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE**
24 **UNIFORM SECURITIES ACT (2002), 2008 PA 551, MCL 451.2101 TO**
25 **451.2703**, with respect to the merits and risks of the prospective
26 investment.

27 (iv) A transferor or assignor does not maintain its principal

1 place of business in this state and the transferee or assignee is
2 not a resident of this state and does not maintain its principal
3 place of business in this state.

4 (d) Coerces or induces a real estate appraiser to inflate the
5 value of real property used as collateral for a mortgage loan,
6 including, but not limited to, by doing any of the following:

7 (i) Representing or implying that a real estate appraiser will
8 not be selected to conduct an appraisal of the real property or
9 selected for future appraisal work unless the appraiser agrees in
10 advance to a value, range of values, or minimum value for the real
11 property.

12 (ii) Representing or implying that a real estate appraiser will
13 not be paid for an appraisal unless the appraiser agrees in advance
14 to a value, range of values, or minimum value for the real
15 property.

16 (2) Subject to subsections (4) and (5), if the commissioner
17 finds that a licensee ~~,OR registrant, or loan officer registrant~~
18 has violated, or directly or indirectly counseled, aided, or
19 abetted in a violation, of this act or the rules promulgated under
20 this act, the commissioner may do 1 or more of the following:

21 (a) Assess a civil fine against the licensee ~~,OR registrant ,~~
22 ~~or loan officer registrant~~ or a person who controls the licensee ~~,~~
23 ~~OR registrant , or loan officer registrant~~ of not more than
24 \$3,000.00 for each violation, except that the licensee ~~,OR~~
25 ~~registrant , or loan officer registrant~~ or the person shall not be
26 fined more than \$30,000.00 for a transaction resulting in more than
27 1 violation, plus the costs of investigation.

1 (b) Suspend or revoke a license ~~, OR registration, or loan~~
2 ~~officer registration~~ or refuse to issue a license or renew a
3 license ~~, OR registration, or loan officer registration.~~

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

10 (3) A civil fine assessed under subsection (2) may be sued for
11 and recovered by and in the name of the commissioner and may be
12 collected and enforced by summary proceedings by the attorney
13 general. Each individual injured by a violation of this act or a
14 rule is a separate violation. In determining under subsection (2)
15 the amount of a fine, whether to suspend or revoke a license ~~, OR~~
16 ~~registration, or loan officer registration,~~ whether to refuse to
17 issue or renew a license, ~~or loan officer registration,~~ or the
18 amount of restitution, the commissioner shall consider the extent
19 to which the violation was a knowing and willful violation, the
20 extent of the injury suffered because of the violation, the
21 corrective action taken by the licensee ~~, OR registrant, or loan~~
22 ~~officer registrant~~ to ensure that the violation will not be
23 repeated, and the record of the licensee ~~, OR registrant, or loan~~
24 ~~officer registrant~~ in complying with this act. Any proceedings
25 under this subsection are subject to the procedures of the
26 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
27 24.328.

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

5 ~~—— (5) If a loan officer registrant violates section 22b(e)(ii),~~
6 ~~the commissioner shall revoke his or her loan officer registration.~~
7 ~~Revocation of a loan officer registration under this subsection~~
8 ~~does not affect the commissioner's authority to pursue any other~~
9 ~~remedy available under subsection (2) for that violation.~~

10 Sec. 33. (1) The mortgage industry advisory board is created.

11 (2) All of the following apply to the board:

12 (a) The board shall consist of 7 individuals, appointed by the
13 commissioner as follows:

14 (i) Two individuals who are employees of, are directors of, or
15 have at least a 25% ownership interest in a licensee or registrant,
16 selected by the commissioner from a list of at least 3 nominees
17 provided to the commissioner by the Michigan mortgage brokers
18 association.

19 (ii) Two individuals who are employees of, are directors of, or
20 have at least a 25% ownership interest in a licensee or registrant,
21 selected by the commissioner from a list of at least 3 nominees
22 provided to the commissioner by the Michigan mortgage lenders
23 association.

24 (iii) One employee who is an employee of, a director of, or who
25 has at least a 25% ownership interest in a licensee or registrant
26 that is a member of any trade association operating in this state
27 that represents mortgage brokers, mortgage lenders, or mortgage

1 servicers. The trade associations may recommend candidates for this
2 position to the commissioner.

3 (iv) Two individuals who are employees of, are directors of, or
4 have at least a 25% ownership interest in business entities that
5 provide services to or purchase services from licensees or
6 registrants.

7 (b) The term of a board member is 4 years, except that for the
8 first board, the commissioner shall appoint 3 individuals for 2-
9 year terms so that the terms of office of board members are
10 staggered.

11 (c) An individual may not serve more than 2 consecutive 4-year
12 terms, and the commissioner may not reappoint an individual who
13 serves 2 consecutive 4-year terms on the board for at least 12
14 months after the end of those consecutive terms.

15 (d) The board shall not include more than 1 member who is
16 employed by, is a director of, or has more than a 1% ownership
17 interest in the same licensee, registrant, affiliate, or other
18 person.

19 (e) Each member of the board shall serve without compensation.
20 However, the office of financial and insurance services shall
21 reimburse a member of the board for his or her travel and other
22 expenses incurred in the performance of an official board function
23 pursuant to the standard travel regulations of the department of
24 management and budget.

25 (f) The board shall retain minutes of its meetings and any
26 other records of the board for at least 10 years. The board shall
27 make its minutes and any other records prepared, owned, used, in

1 the possession of, or retained by the board in the performance of
 2 an official function available to the commissioner immediately on
 3 request and make those minutes and records available to the public
 4 in compliance with the freedom of information act, 1976 PA 442, MCL
 5 15.231 to 15.246.

6 (3) The board shall communicate to the commissioner issues of
 7 concern to the residential mortgage industry and shall review and
 8 make recommendations to the commissioner concerning all of the
 9 following:

10 ~~—— (a) Course sponsors or providers, course instructors, and the~~
 11 ~~content of and materials for courses provided to loan officers and~~
 12 ~~loan officer applicants under section 2a or 2b or section 2a or 2c~~
 13 ~~of the secondary mortgage loan act, MCL 493.52a and 493.52c.~~

14 ~~—— (b) Content and procedures for examinations given to loan~~
 15 ~~officers under section 2a or section 2a of the secondary mortgage~~
 16 ~~loan act, MCL 493.52a.~~

17 (A) ~~(e) Rules proposed under this act, or the secondary~~
 18 ~~mortgage loan act, OR THE MORTGAGE LOAN ORIGINATOR LICENSING ACT.~~

19 ~~—— (d) Procedures to verify attendance at and participation in~~
 20 ~~courses conducted electronically under section 2b(3)(c) or under~~
 21 ~~section 2c(3)(c) of the secondary mortgage loan act, MCL 493.52c.~~

22 (B) ~~(e) Procedures for maintaining the confidentiality of~~
 23 ~~personal identifying information and other information concerning~~
 24 ~~all of the following:~~

25 (i) Licensees, registrants, and ~~loan officer registrants.~~

26 ~~—— (ii) Applicants~~ **APPLICANTS** for licensure ~~7~~ **OR** registration. ~~7~~
 27 ~~or loan officer registration.~~

1 (ii) ~~(iii)~~ Licensees, registrants, and secondary mortgage loan
2 officer registrants under the secondary mortgage loan act.

3 ~~(iv)~~ Applicants **APPLICANTS** for licensure, ~~OR~~ registration, ~~or~~
4 secondary mortgage loan officer registration under the secondary
5 mortgage loan act.

6 **(iii) LICENSEES OR APPLICANTS FOR LICENSURE UNDER THE MORTGAGE**
7 **LOAN ORIGINATOR LICENSING ACT.**

8 (C) ~~(f)~~ Any other issue referred to the board by the
9 commissioner. ~~(4) As used in this section, "secondary mortgage loan~~
10 ~~act" means the secondary mortgage loan act, 1981 PA 125, MCL 493.51~~
11 ~~to 493.81.~~

12 Enacting section 1. Sections 2a, 2b, 2c, and 22b of the
13 mortgage brokers, lenders, and servicers licensing act, 1987 PA
14 173, MCL 445.1652a, 445.1652b, 445.1652c, and 445.1672b, are
15 repealed effective January 1, 2011.

16 Enacting section 2. This amendatory act takes effect January
17 1, 2011.

18 Enacting section 3. This amendatory act does not take effect
19 unless Senate Bill No. 462

20 of the 95th Legislature is enacted into law.