

HOUSE BILL No. 5755

April 1, 2004, Introduced by Rep. Koetje and referred to the Committee on Commerce.

[A bill to amend 1987 PA 173, entitled "Mortgage brokers, lenders, and servicers licensing act," by amending sections 1a, 2, and 29 (MCL 445.1651a, 445.1652, and 445.1679), section 1a as amended by 2002 PA 391, section 2 as amended by 2002 PA 4, and section 29 as amended by 1996 PA 210.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1a. As used in this act, unless the context requires
2 otherwise:

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

7 (b) "Commissioner" means the commissioner of the office of
8 financial and insurance services of the department of consumer
9 and industry services or his or her authorized agent.

1 (c) "Construction loan" means a mortgage loan for the purpose
2 of constructing a 1-to-4 family dwelling, which loan is approved
3 and closed before completion of the construction of the
4 improvement on the real property.

5 (d) "Control person" means a director or executive officer of
6 a licensee or a person who has the authority to participate in
7 the direction, directly or indirectly through 1 or more other
8 persons, of the management or policies of a licensee or
9 registrant.

10 (e) "Depository financial institution" means a state or
11 nationally chartered bank, a state or federally chartered savings
12 and loan association, savings bank, or credit union, or an entity
13 of the federally chartered farm credit system.

14 (f) "Executive officer" means an officer, member, or partner
15 of a licensee or registrant, including chief executive officer,
16 president, vice president, chief financial officer, controller,
17 compliance officer, or any other similar position.

18 (g) "Financial licensing act" means the consumer financial
19 services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of
20 the acts listed in section 2 of the consumer financial services
21 act, 1988 PA 161, MCL 487.2052.

22 (h) "Firm commitment" means an underwriting in which a
23 broker-dealer commits to buy the mortgage loan or the entire
24 issue of securities based upon or backed by 1 or more mortgage
25 loans and assumes all financial responsibility for any unsold
26 securities.

27 (i) "Individual investor" means a person residing in this

1 state or having its principal place of business in this state,
 2 other than a bank, savings bank, savings and loan association,
 3 credit union, trust company, insurance company, investment
 4 company as defined in the investment company act of 1940, ~~title~~
 5 ~~I of chapter 686, 54 Stat. 789, 15 U.S.C. USC 80a-1 to 80a-3~~
 6 ~~and 80a-4 to 80a-64~~, pension or profit sharing plan, the assets
 7 of which are managed by a bank or trust company or other
 8 institutional manager, financial institution, institutional
 9 manager, broker-dealer that is a member of the New York stock
 10 exchange or registered under the uniform securities act, 1964 PA
 11 265, MCL 451.501 to 451.818, **or the uniform securities act**
 12 **(2002), MCL 451.2101 to 451.2703**, the federal national mortgage
 13 association, the government national mortgage association, the
 14 federal home loan mortgage corporation, or a mortgage lender or
 15 mortgage servicer.

16 (j) "License" means a license issued under this act.

17 (k) "Licensee" means a person licensed or required to be
 18 licensed under this act.

19 (l) "Mortgage broker" means a person who, directly or
 20 indirectly, does 1 or both of the following:

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

23 (ii) Serves or offers to serve as an agent for a person who
 24 makes or offers to make mortgage loans.

25 (m) "Mortgage lender" means a person who, directly or
 26 indirectly, makes or offers to make mortgage loans.

27 (n) "Mortgage loan" means a loan secured by a first mortgage

1 on real property located in this state and used, or improved to
2 be used, as a dwelling and designed for occupancy by 4 or fewer
3 families or a land contract covering real property located in
4 this state used, or improved to be used, as a dwelling and
5 designed for occupancy by 4 or fewer families. A mortgage loan
6 does not include a home improvement installment contract under
7 the home improvement finance act, 1965 PA 332, MCL 445.1101 to
8 445.1431.

9 (o) "Mortgage servicer" means a person who, directly or
10 indirectly, services or offers to service mortgage loans.

11 (p) "Person" means an individual, corporation, **limited**
12 **liability company**, partnership, association, governmental entity,
13 or any other legal entity.

14 (q) "Real estate broker" means a broker or associate broker
15 licensed under article 25 of the occupational code, 1980 PA 299,
16 MCL 339.2501 to 339.2518.

17 (r) "Real estate salesperson" means a salesperson licensed
18 under article 25 of the occupational code, 1980 PA 299, MCL
19 339.2501 to 339.2518.

20 (s) "Register" means filing a notice with the commissioner on
21 a form prescribed by the commissioner that notifies the
22 commissioner of the intent to engage in the activities of a
23 mortgage broker, mortgage lender, or mortgage servicer in this
24 state and the payment of any fees required under this act, along
25 with the other documents, proofs, and fees required by the
26 commissioner.

27 (t) "Registrant" means a person registered or required to be

1 registered under this act.

2 (u) "Service" means the collection or remittance, or the
3 right or obligation to collect or remit, for a lender, noteowner,
4 noteholder, mortgage servicer, or the licensee's or registrant's
5 own account of 4 or more installment payments of the principal,
6 interest, or an amount placed in escrow under a mortgage loan,
7 mortgage servicing agreement, or an agreement with the
8 mortgagor.

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

(a) The person is ~~solely~~ **an individual who is** performing services as an employee **or agent** of only 1 mortgage broker, mortgage lender, or mortgage servicer.

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

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

(2) A person that is licensed to make regulatory loans under the regulatory loan act, ~~of 1963,~~ 1939 PA 21, MCL 493.1 to ~~493.25~~ **493.24**, or is licensed to make secondary mortgage loans under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and is registered with the commissioner shall file with the commissioner an application for a license under section 3(1) or shall discontinue all activities that are subject to this act.

(3) Unless a residential mortgage originator is otherwise licensed or registered under this act, a residential mortgage originator shall not receive directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits from a mortgage broker, mortgage lender, or mortgage servicer other than the employer of the residential mortgage originator.

(4) Unless a residential mortgage originator is otherwise licensed or registered under this act, a mortgage broker, mortgage lender, or mortgage servicer shall not pay directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits to a residential mortgage originator other than an employee of the mortgage broker, mortgage lender, or mortgage servicer. As used in this subsection and subsection (3), "residential mortgage originator" means a person who assists another person in obtaining a mortgage loan.

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

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

9 Sec. 29. (1) A person or any owner, partner, member,
10 officer, director, trustee, employee, agent, broker, or their
11 representative acting on the authority of ~~such~~ **that** person who
12 willfully or intentionally does any of the following is guilty of
13 a misdemeanor punishable by a fine of not more than \$5,000.00, or
14 imprisonment for not more than 3 years, or both:

15 (a) Engages in this state in the business of a mortgage
16 broker, mortgage lender, or mortgage servicer without a license
17 or registration required under this act.

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

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

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

1 (iii) A construction loan.

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

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

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

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

14 (A) The broker-dealer is registered under the uniform
15 securities act, ~~Act No. 265 of the Public Acts of 1964, being~~
16 ~~sections 451.501 to 451.818 of the Michigan Compiled Laws 1964~~
17 **PA 265, MCL 451.501 to 451.818, or the uniform securities act**
18 **(2002), MCL 451.2101 to 451.2703.**

19 (B) The broker-dealer is not an affiliate of the mortgage
20 lender unless the person acquired the broker-dealer registration,
21 directly or indirectly, before September 1, 1987 under ~~Act~~
22 ~~No. 265 of the Public Acts of 1964~~ **the uniform securities act,**
23 **1964 PA 265, MCL 451.501 to 451.818,** was affiliated with a
24 mortgage lender before September 1, 1987, and has continuously
25 maintained that registration subsequent to September 1, 1987.
26 For purposes of this subparagraph, if an aggregate of more than
27 10% of the outstanding voting stock or interest in a corporation,

1 unincorporated organization, partnership, or other legal entity
2 that is a broker-dealer or mortgage lender is sold, transferred,
3 assigned, or otherwise conveyed subsequent to September 1, 1987,
4 the registration ~~shall be~~ **is** considered to not have been
5 continuously maintained.

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

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

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

15 (B) An individual who, after the purchase, has an investment
16 of more than \$50,000.00 in such loans or securities, including
17 installment payments to be made within 1 year after purchase by
18 the individual, has either personal income before taxes in excess
19 of \$100,000.00 for his or her last fiscal year or latest 12-month
20 period and is capable of bearing the economic risk, or net worth
21 in excess of \$1,000,000.00, and has the knowledge and experience
22 in financial and business matters that he or she is capable of
23 evaluating the merits and risks of the prospective investment, or
24 has obtained the advice of an attorney, certified public
25 accountant, or investment adviser registered under the investment
26 advisers act of 1940, or an investment adviser registered under
27 ~~Act No. 265 of the Public Acts of 1964~~ **the uniform securities**

1 act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform
2 securities act (2002), MCL 451.2101 to 451.2703, with respect to
3 the merits and risks of the prospective investment.

4 (iv) A transferor or assignor does not maintain its principal
5 place of business in this state and the transferee or assignee is
6 not a resident of this state and does not maintain its principal
7 place of business in this state.

8 (2) If the commissioner finds that a licensee or registrant
9 has violated this act or the rules promulgated under this act,
10 the commissioner may do 1 or more of the following:

11 (a) Assess a civil fine against the licensee, registrant, or
12 a person who controls the licensee or registrant of not more than
13 \$1,000.00 for each violation, except that the licensee,
14 registrant, or a person shall not be fined more than \$10,000.00
15 for a transaction resulting in more than 1 violation, plus the
16 costs of investigation.

17 (b) Suspend or revoke a license or registration or refuse to
18 issue a license or renew a license or registration.

19 (c) Require the licensee or registrant or a person who
20 controls the licensee or registrant to make restitution to each
21 injured individual, if the commissioner finds that the violation
22 of this act or a rule promulgated under this act resulted in an
23 injury to 1 or more individuals.

24 (3) A civil fine assessed under subsection (2) may be sued
25 for and recovered by and in the name of the commissioner and may
26 be collected and enforced by summary proceedings by the attorney
27 general. Each individual injured by a violation of this act or a

1 rule shall constitute a separate violation. In determining under
2 subsection (2) the amount of a fine, whether to suspend or revoke
3 a license or registration, whether to refuse to issue or renew a
4 license, or the amount of restitution, the commissioner shall
5 consider the extent to which the violation was a knowing and
6 willful violation, the extent of the injury suffered because of
7 the violation, the corrective action taken by the licensee or
8 registrant to ensure that the violation will not be repeated, and
9 the record of the licensee or registrant in complying with this
10 act. Any proceedings under this subsection shall be subject to
11 the procedures of the administrative procedures act of 1969, ~~Act~~
12 ~~No. 306 of the Public Acts of 1969, being sections 24.201 to~~
13 ~~24.328 of the Michigan Compiled Laws~~ **1969 PA 306, MCL 24.201 to**
14 **24.328.**

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

19 Enacting section 1. This amendatory act does not take
20 effect unless Senate Bill No. _____ or House Bill No. 5746
21 (request no. 06004'03) of the 92nd Legislature is enacted into
22 law.