

# HOUSE BILL NO. 5799

June 06, 2024, Introduced by Reps. Xiong, Tsernoglou, Fitzgerald and Glanville and referred to the Committee on Insurance and Financial Services.

A bill to amend 1988 PA 161, entitled  
"Consumer financial services act,"  
by amending sections 2, 5, 6, and 10g (MCL 487.2052, 487.2055,  
487.2056, and 487.2060g), as amended by 2006 PA 252.

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

- 1       Sec. 2. As used in this act:
- 2       (a) "Applicant" means a person that has applied to the
- 3       commissioner to be licensed under this act.
- 4       (b) "Bureau" means the ~~office of financial and insurance~~

~~services of the department of labor and economic growth.~~**department**  
**of insurance and financial services.**

(c) "Business activity" means any activity regulated ~~by~~**under**  
 any of the financial licensing acts.

(d) "Class I license" means a license issued under this act  
 that authorizes the licensee to engage in all of the activities  
 permitted under any of the financial licensing acts.

(e) "Class II license" means a license issued under this act  
 that authorizes all of the activities permitted under a class I  
 license except for ~~activities permitted under the sale of checks~~  
~~act, 1960 PA 136, MCL 487.901 to 487.916,~~ loan servicing activities  
 under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to  
 493.81, or the mortgage brokers, lenders, and servicers licensing  
 act, 1987 PA 173, MCL 445.1651 to 445.1684.

(f) "Commissioner" means the ~~commissioner of the office of~~  
~~financial and insurance services~~**director of the bureau** or an  
 authorized representative of the ~~commissioner~~**director.**

(g) "Control person" means a director or executive officer of  
 a licensee or a person ~~who~~**that** has the authority to participate in  
 the direction, directly or indirectly through 1 or more other  
 persons, of the management or policies of a licensee.

(h) "Depository financial institution" means a bank, savings  
 and loan association, savings bank, or credit union organized under  
 the laws of this state, another state, the District of Columbia,  
 the United States, or a territory or protectorate of the United  
 States, whose deposits are insured by an agency of the federal  
 government.

(i) "Executive officer" means an officer, member, or partner  
 of a licensee, including chief executive officer, president, vice

1 president, chief financial officer, controller, compliance officer,  
2 or any other similar position.

3 (j) "Financial licensing acts" means ~~this~~ **any of the**  
4 **following:**

5 (i) **This** act. ~~the~~

6 (ii) **The** regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.  
7 ~~the~~

8 (iii) **The** secondary mortgage loan act, 1981 PA 125, MCL 493.51  
9 to 493.81. ~~the~~

10 (iv) **The** motor vehicle sales finance act, 1950 (Ex Sess) PA 27,  
11 MCL 492.101 to 492.141. ~~the~~

12 (v) 1984 PA 379, MCL 493.101 to 493.114. ~~the sale of checks~~  
13 ~~act, 1960 PA 136, MCL 487.901 to 487.916;~~

14 (vi) **Through June 30, 2025,** the money transmission services  
15 act, **2006 PA 250,** MCL 487.1001 to ~~487.1048;~~ and ~~the~~ **487.1047.**

16 (vii) **The money transmission modernization act.**

17 (viii) **The** mortgage brokers, lenders, and servicers licensing  
18 act, 1987 PA 173, MCL 445.1651 to 445.1684.

19 (k) "Licensee" means a person that is licensed under this act.

20 (l) "Loan servicing activities" means the collection or  
21 remittance for a lender, noteowner, noteholder, or the licensee's  
22 own account of 4 or more installment payments of the principal,  
23 interest, or an amount placed in escrow under a mortgage servicing  
24 agreement or a mortgage loan subject to the mortgage brokers,  
25 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to  
26 445.1684, or a mortgage servicing agreement or secondary mortgage  
27 loan subject to the secondary mortgage loan act, 1981 PA 125, MCL  
28 493.51 to 493.81, or an agreement with the mortgagor.

29 (m) **"Money transmission" means that term as defined in section**

1 **5 of the money transmission modernization act.**

2 (n) ~~(m)~~ "Person" means an individual, corporation,  
3 partnership, association, limited liability company, or any other  
4 legal entity.

5 Sec. 5. (1) An application for a license ~~shall~~**must** be  
6 accompanied by all of the following:

7 (a) An annual operating fee as established by the commissioner  
8 under section 11.

9 (b) An application fee as provided in section 11. The  
10 application fee is not refundable.

11 (c) Financial statements, reasonably satisfactory to the  
12 commissioner, showing that the applicant's net worth exceeds  
13 \$100,000.00 for an applicant for a class I license; \$50,000.00 for  
14 an applicant for a class II license; \$1,000,000.00 for an applicant  
15 that intends to engage in business activity governed by 1984 PA  
16 379, MCL 493.101 to 493.114; or \$100,000.00 plus an additional  
17 \$25,000.00 for each location or authorized delegate, as applicable,  
18 or \$1,000,000.00, whichever is less, for an applicant that intends  
19 to provide **services for** money transmission. ~~services as defined in~~  
20 ~~section 2 of the money transmission services act.~~

21 (2) A licensee shall have and continue to maintain the  
22 required net worth **under subsection (1)** while engaging in the  
23 business activities authorized for licensing under this act.

24 (3) The commissioner may by order establish a higher net worth  
25 requirement **under subsection (1)** for new class I licensees to  
26 assure safe and sound operation of the activities.

27 (4) ~~(2)~~ Net worth under subsection (1)(c) ~~shall~~**must** be  
28 determined at the conclusion of the fiscal year of the licensee  
29 immediately preceding the date an application for a license is

submitted to the commissioner or, for corporations not in existence as of the previous year end, the immediately preceding month end.

(5) Net worth ~~shall~~**must** be disclosed on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and ~~shall~~**must** be computed in accordance with generally accepted accounting principles.

(6) The following assets ~~shall~~**must** be excluded in the computation of net worth:

(a) That portion of an applicant's assets pledged to secure obligations of any person other than the applicant.

(b) Receivables from officers or, in the case of a corporate applicant other than a publicly traded company, stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest, except that construction loan receivables secured by mortgages from related companies are not so excluded.

(c) An amount in excess of the lower of the cost or market value of mortgage loans in foreclosure or real property acquired through foreclosure.

(d) An investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates that is greater than the market value of the investment.

(e) Goodwill or value placed on insurance renewals or property management contract renewals or other similar intangible value.

(f) Organization costs.

Sec. 6. (1) An applicant for a license shall furnish a surety bond or letter of credit to secure its obligations under this act to the commissioner. Except as provided in this subsection, the principal amount of a surety bond or letter of credit ~~shall~~**must** be

1 at least \$500,000.00. If the applicant intends to provide **services**  
 2 **for** money transmission, ~~services as defined in section 2 of the~~  
 3 ~~money transmission services act,~~ the applicant ~~shall~~ **must** file a  
 4 surety bond that is in a principal amount as determined under  
 5 section ~~13(5)(b)-67~~ of the money transmission ~~services~~  
 6 **modernization** act for a licensee under that act.

7 (2) A surety bond described in subsection (1) ~~shall~~ **must** be  
 8 payable to the commissioner for the benefit of the people of ~~the~~  
 9 **this** state ~~of Michigan~~ for the use of, and may be sued on by, ~~the~~  
 10 **this** state. A surety bond or letter of credit ~~shall remain~~ **remains**  
 11 for the duration of the licensure period.

12 (3) A surety bond or letter of credit required under  
 13 subsection (1) ~~shall~~ **must** be in a form satisfactory to the  
 14 commissioner and payable ~~upon~~ **on** demand by the commissioner if ~~he~~  
 15 ~~or she~~ **the commissioner** determines that the licensee is not  
 16 conducting its activities as required by this act and all of the  
 17 rules promulgated under this act, and has failed to pay all money  
 18 that becomes due to ~~a~~ **any of the following:**

19 (a) A person who is an installment buyer under the motor  
 20 vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to  
 21 492.141. ~~, Michigan residents who purchase checks under the sale of~~  
 22 ~~checks act, 1960 PA 136, MCL 487.901 to 487.916, Michigan residents~~

23 (b) A resident of this state who ~~purchase~~ **purchases services**  
 24 **for** money transmission. ~~services as defined in section 2 of the~~  
 25 ~~money transmission services act,~~

26 (c) A loan ~~applicants,~~ **applicant,** loan servicing ~~customers,~~  
 27 **customer,** and ~~borrowers~~ **borrower** under the secondary mortgage loan  
 28 act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers,  
 29 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to

1 445.1684, and the commissioner.

2 (4) The commissioner shall prioritize and pay claims against a  
3 bond or letter of credit filed with the commissioner under this  
4 section in a manner that, in the commissioner's discretion, best  
5 protects the public interest.

6 (5) Claims described in subsection (4) may only be filed  
7 against a licensee's bond or letter of credit by the commissioner  
8 on behalf of the bureau and of individuals having claims and who  
9 are, as applicable, ~~the licensee's~~ **any of the following:**

10 (a) ~~A loan applicants, applicant, loan servicing customers,~~  
11 **customer,** and ~~borrowers borrower~~ under ~~the~~ **any of the following:**

12 (i) **The** secondary mortgage loan act, 1981 PA 125, MCL 493.51 to  
13 493.81. ~~or the~~

14 (ii) **The** mortgage brokers, lenders, and servicers licensing  
15 act, 1987 PA 173, MCL 445.1651 to 445.1684. ~~Michigan residents~~  
16 ~~who purchase checks under the sale of checks act, 1960 PA 136, MCL~~  
17 ~~487.901 to 487.916, Michigan residents~~

18 (b) **A resident** who ~~purchase~~ **purchases services for** money  
19 ~~transmission. services as defined in section 2 of the money~~  
20 ~~transmission services act, or persons~~

21 (c) **A person** who ~~are~~ **is an** installment ~~buyers~~ **buyer** under the  
22 motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101  
23 to 492.141.

24 (6) Claims filed with the commissioner against a bond or  
25 letter of credit by a loan applicant, loan servicing customer, or  
26 borrower under the secondary mortgage loan act, 1981 PA 125, MCL  
27 493.51 to 493.81, or the mortgage brokers, lenders, and servicers  
28 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, ~~shall~~ **must**  
29 involve, as applicable, only a mortgage loan, mortgage loan

1 application, secondary mortgage loan, or secondary mortgage loan  
 2 application secured or to be secured by real property used as a  
 3 dwelling located in this state. The amount of the claim ~~shall~~**must**  
 4 not exceed actual fees paid by the claimant to the licensee in  
 5 connection with a loan application, overcharges of principal and  
 6 interest, and excess escrow collections by the licensee.

7 (7) Before payment of any claim filed under this section,  
 8 unless the commissioner waives, in whole or in part, the right to  
 9 priority of payment, the commissioner ~~shall~~**must** be paid in full  
 10 for fines and fees due to the bureau and for expenses incurred in  
 11 investigating the licensee and in distributing the proceeds of the  
 12 bond or letter of credit. In the event that valid claims exceed the  
 13 amount of the bond or letter of credit, each claimant except the  
 14 commissioner is entitled only to a pro rata amount of ~~his or her~~  
 15 **the claimant's** valid claim.

16 Sec. 10g. (1) If, in the opinion of the commissioner, a person  
 17 has engaged in fraud or money laundering, the commissioner may  
 18 ~~serve upon that~~**the** person **with** a written notice of intention to  
 19 prohibit that person from being employed by, an agent of, or  
 20 control person of a licensee under this act or a licensee or  
 21 registrant under a financial licensing act.

22 (2) A notice issued under subsection (1) ~~shall~~**must** contain a  
 23 statement of the facts supporting the prohibition and, except as  
 24 provided under subsection (7), set a hearing to be held not more  
 25 than 60 days after the date of the notice. If the person does not  
 26 appear at the hearing, ~~he or she~~**the person** is considered to have  
 27 consented to the issuance of an order in accordance with the  
 28 notice.

29 (3) If, after a hearing held under subsection (2), the



1 commissioner finds that any of the grounds specified in the notice  
 2 have been established, the commissioner may issue an order of  
 3 suspension or prohibition from being a licensee or registrant or  
 4 from being employed by, an agent of, or control person of any  
 5 licensee under this act or a licensee or registrant under a  
 6 financial licensing act.

7 (4) An order issued under subsection (2) or (3) is effective  
 8 ~~upon service upon the person.~~ **on the date that the person is served**  
 9 **with the order.** The commissioner shall also serve a copy of the  
 10 order ~~upon~~ **on** the licensee ~~of which to whom~~ the person is an  
 11 employee, agent, or control person. The order remains ~~in effect~~  
 12 **effective** until it is stayed, modified, terminated, or set aside by  
 13 the commissioner or a reviewing court.

14 (5) After 5 years from the date of an order issued under  
 15 subsection (2) or (3), the person subject to the order may apply to  
 16 the commissioner to terminate the order.

17 (6) If the commissioner considers that a person served a  
 18 notice under subsection (1) poses an imminent threat of financial  
 19 loss to applicants for loans, mortgage loans, secondary mortgage  
 20 loans, credit card arrangements, or installment sales credit,  
 21 borrowers on loans, obligors on installment sale contracts, loan  
 22 servicing customers, purchasers of mortgage loans or interests in  
 23 mortgage loans, or purchasers of **services for** money transmission,  
 24 ~~services as defined in section 2 of the money transmission services~~  
 25 ~~act,~~ the commissioner may serve ~~upon~~ the person **with** an order of  
 26 suspension from being employed by, an agent of, or control person  
 27 of any licensee. The suspension is effective on the date the order  
 28 is issued and, unless stayed by a court, remains in effect pending  
 29 the completion of a review as provided under this section and the

1 commissioner has dismissed the charges specified in the order.

2 (7) Unless otherwise agreed to by the commissioner and the  
3 person served with an order issued under subsection (6), the  
4 hearing required under subsection (2) to review the suspension  
5 ~~shall~~**must** be held not earlier than 5 days or later than 20 days  
6 after the date of the notice.

7 (8) If a person is convicted of a crime involving fraud,  
8 dishonesty, money laundering, or breach of trust, the commissioner  
9 may issue an order suspending or prohibiting that person from being  
10 a licensee and from being employed by, an agent of, or control  
11 person of any licensee under this act or a licensee or registrant  
12 under a financial licensing act. After 5 years from the date of the  
13 order, the person subject to the order may apply to the  
14 commissioner to terminate the order.

15 (9) The commissioner shall mail a copy of any notice or order  
16 issued under this section to the licensee of which the person  
17 subject to the notice or order is an employee, agent, or control  
18 person.

19 (10) As used in this section:

20 (a) "Fraud" includes actionable fraud, actual or constructive  
21 fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the  
22 execution, in the inducement, in fact, or in law, or any other form  
23 of fraud.

24 (b) "Money laundering" means conduct by 1 or more persons that  
25 conceals the existence, illegal source, or illegal application of  
26 income and then disguises that income to make it appear legitimate.  
27 Money laundering includes, but is not limited to, conduct that  
28 violates any state or federal law that imposes a criminal penalty  
29 for money laundering.

1           Enacting section 1. This amendatory act takes effect January  
2 1, 2025.

3           Enacting section 2. This amendatory act does not take effect  
4 unless Senate Bill No. \_\_\_\_ or House Bill No. 5798 (request no.  
5 04440'23) of the 102nd Legislature is enacted into law.