

HOUSE BILL No. 5513

March 16, 1988, Introduced by Rep. Giese and referred to the Committee on Corporations and Finance.

A bill to amend sections 1a, 6, 21, and 25 of Act No. 173 of the Public Acts of 1987, entitled "Mortgage brokers, lenders, and servicers licensing act," being sections 445.1651a, 445.1656, 445.1671, and 445.1675 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1a, 6, 21, and 25 of Act No. 173 of the
2 Public Acts of 1987, being sections 445.1651a, 445.1656,
3 445.1671, and 445.1675 of the Michigan Compiled Laws, are amended
4 to read as follows:

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

7 (a) "Affiliate" means a person or group of persons that
8 directly or indirectly through 1 or more intermediaries controls,
9 is controlled by, or is under common control with another person

1 and engaged in a business related to transactions governed by
2 this act.

3 (b) "Commissioner" means the commissioner of the financial
4 institutions bureau of the department of commerce or his or her
5 authorized agent.

6 (c) "Depository financial institution" means a state or
7 nationally chartered bank, or a state or federally chartered sav-
8 ings and loan association or savings bank, or a state or feder-
9 ally chartered credit union or an entity of the federally
10 chartered farm credit system.

11 (d) "Firm commitment" means an underwriting in which a
12 broker-dealer commits to buy the mortgage loan or the entire
13 issue of securities based upon or backed by 1 or more mortgage
14 loans and assumes all financial responsibility for any unsold
15 securities.

16 (e) "Individual investor" means a person residing in this
17 state or having its principal place of business in this state,
18 other than a bank, savings bank, savings and loan association,
19 credit union, trust company, insurance company, investment com-
20 pany as defined in the investment company act of 1940, 15
21 U.S.C. 80a-1 ~~, et seq.~~ TO 80a-64, pension or profit sharing
22 plan, the assets of which are managed by a bank or trust company
23 or other institutional manager, financial institution, institu-
24 tional manager, broker-dealer which is a member of the New York
25 stock exchange or licensed under the uniform securities act, Act
26 No. 265 of the Public Acts of 1964, being sections 451.501 to
27 451.818 of the Michigan Compiled Laws, the federal national

1 mortgage association, the government national mortgage
2 association, the federal home loan mortgage corporation, or a
3 mortgage lender or mortgage servicer.

4 (f) "License" means a license to act as a mortgage broker,
5 mortgage lender, or mortgage servicer issued pursuant to this
6 act.

7 (g) "Licensee" means a mortgage broker, mortgage lender, or
8 mortgage servicer licensed or required to be licensed under this
9 act.

10 (h) "Mortgage broker" means any person who, directly or
11 indirectly, does 1 or more of the following:

12 (i) Serves or offers to serve as an agent for any person in
13 an attempt to obtain a mortgage loan; or

14 (ii) Serves or offers to serve as an agent for any person
15 who desires to make mortgage loans.

16 (i) "Mortgage lender" means any person who, directly or
17 indirectly, makes or offers to make mortgage loans.

18 (j) "Mortgage loan" means any loan secured by a first mort-
19 gage on real property designed for occupancy by 4 or fewer
20 families. ~~or a land contract covering real property designed~~
21 ~~for occupancy by 4 or fewer families.~~

22 (k) "Mortgage servicer" means any person who, directly or
23 indirectly, services or offers to service mortgage loans.

24 (l) "Person" means an individual, sole proprietorship, or a
25 corporation, partnership, or any other group of individuals, how-
26 ever organized.

1 (m) "Real estate salesperson" means, for the purposes of
2 this act only, a salesperson or an associate broker, licensed
3 under article 25 of the occupational code, Act No. 299 of the
4 Public Acts of 1980, being sections 339.2501 to 339.2515 of the
5 Michigan Compiled Laws.

6 (n) "Register" means filing a notice with the commissioner
7 on a form prescribed by the commissioner that notifies the com-
8 missioner of the intent to engage in the activities of a mortgage
9 broker, mortgage lender, or mortgage servicer in this state.

10 (o) "Registrant" means a mortgage broker, mortgage lender,
11 or mortgage servicer registered or required to be registered
12 under this act.

13 (p) "Service" means to receive more than 3 installment pay-
14 ments of the principal, interest, or an amount placed in escrow
15 pursuant to a mortgage loan.

16 Sec. 6. (1) The following shall register with the
17 commissioner:

18 (a) A mortgage broker, mortgage lender, or mortgage servicer
19 approved as a seller or servicer by the federal national mortgage
20 association or the federal home loan mortgage corporation.

21 (b) A mortgage broker, mortgage lender, or mortgage servicer
22 approved as an issuer or servicer by the government national
23 mortgage association.

24 (c) A mortgage broker, mortgage lender, or mortgage servicer
25 licensed to make regulatory loans pursuant to the regulatory loan
26 act of 1963, Act No. 21 of the Public Acts of 1939, being
27 sections 493.1 to 493.26 of the Michigan Compiled Laws, or

1 licensed to make secondary mortgage loans pursuant to Act No. 125
2 of the Public Acts of 1981, being sections 493.51 to 493.81 of
3 the Michigan Compiled Laws.

4 (d) Except as provided in subsection (7), a real estate
5 broker or real estate salesperson licensed under article 25 of
6 the occupational code, Act No. 299 of the Public Acts of 1980,
7 being sections 339.2501 to 339.2515 of the Michigan Compiled
8 Laws, who acts as a mortgage broker for not more than 1 licensee
9 or 1 registrant, or who acts as a mortgage broker, mortgage
10 lender, or mortgage servicer only in connection with real estate
11 sales in which the real estate broker or salesperson affiliated
12 with the real estate broker is engaged and who receives for such
13 services additional compensation beyond the customary commission
14 on real estate sales.

15 (2) A registrant shall not be required to comply with sec-
16 tion 3, 4, 5, or 7 and shall not be subject to annual examination
17 by the commissioner or be required to file annual reports with
18 the commissioner.

19 (3) A mortgage broker, mortgage lender, or a mortgage serv-
20 icer which is a subsidiary or affiliate of a depository financial
21 institution or a subsidiary or affiliate of a holding company of
22 a depository financial institution shall not be subject to sec-
23 tion 29(1)(b) or (c).

24 (4) Notwithstanding section 25(m), a mortgage broker, mort-
25 gage lender, or a mortgage servicer which is a subsidiary or
26 affiliate of a depository financial institution or a subsidiary
27 or affiliate of a holding company of a depository financial

1 institution may register and become subject to the provisions of
2 the act applicable to registrants.

3 (5) A registration, unless it is renewed, shall expire on
4 June 30 of each year. A registration may be renewed by register-
5 ing with the commissioner and paying the annual fee for the suc-
6 ceeding year. The registration and notice shall be received by
7 the commissioner on or before June 15 of each year.

8 (6) If a real estate broker or real estate salesperson acts
9 as a mortgage broker, mortgage lender, or mortgage servicer not
10 in connection with real estate sales in which the real estate
11 broker or real estate salesperson affiliated with the real estate
12 broker is engaged, the real estate broker or real estate sales-
13 person shall be licensed or registered as otherwise required
14 under this act.

15 (7) A real estate broker or real estate salesperson, in con-
16 nection with real estate sales in which the real estate broker or
17 real estate salesperson affiliated with the real estate broker is
18 engaged, who acts as a mortgage broker on ~~10~~ 50 or fewer mort-
19 gage loans in any 12-month period from July 1 to June 30 and who
20 receives for such services additional compensation beyond the
21 customary commission on real estate sales shall be exempt from
22 the registration or licensing requirements of this act for that
23 12-month period.

24 (8) A MORTGAGE SERVICER WHO SERVICES LAND CONTRACTS WHICH
25 INCLUDE THE COLLECTION OF MONEY FOR THE PAYMENT OF TAXES OR
26 INSURANCE, OR SERVICES MORE THAN 50 LAND CONTRACTS.

1 Sec. 21. (1) Every licensee and registrant shall maintain
2 books, accounts, records, and documents of the business, as may
3 be prescribed by the commissioner, conducted under the license or
4 registration to enable the commissioner to determine whether the
5 business of the licensee or registrant is conducted in accordance
6 with this act and the rules promulgated under this act. The pre-
7 servation of records by photographic reproduction or electroni-
8 cally shall constitute compliance with this section. If the
9 books, accounts, records, and documents are not made available in
10 this state, the licensee or registrant shall pay the reasonable
11 travel, lodging, and meal expenses of the examiner as provided in
12 section 20.

13 (2) A licensee or registrant shall preserve and keep avail-
14 able for examination by the commissioner each mortgage loan docu-
15 ment in its possession or control, including by way of example
16 and not limitation, the application, credit report, employment
17 verification, loan disclosure statement and settlement statement,
18 until the mortgage loan is transferred or assigned, or the expi-
19 ration of 3 years after the date the mortgage loan is closed,
20 whichever occurs first. If the mortgage loan is transferred or
21 assigned, the licensee or registrant shall preserve and keep
22 available for examination by the commissioner copies of the prom-
23 issory note, mortgage, ~~land contract,~~ truth-in-lending disclo-
24 sure statements, and settlement statements in its possession or
25 control for 3 years after the date the mortgage loan is trans-
26 ferred or assigned. Notwithstanding any provision to the
27 contrary, each licensee or registrant shall preserve and keep

1 available for examination by the commissioner all documents
2 pertaining to a rejected application for a mortgage loan for the
3 period of time required by state or federal law. A licensee or
4 registrant shall preserve all other books, accounts, records, and
5 documents pertaining to the licensee's or registrant's business,
6 and keep them available for examination by the commissioner for
7 not less than 3 years after the conclusion of the fiscal year of
8 the licensee or registrant in which the book, account, record, or
9 document was created.

10 (3) On or before a date to be determined by the commission-
11 er, a licensee shall file annually with the commissioner a report
12 giving information, as required by the commissioner, concerning
13 the business and operations of the licensee under authority of
14 this act during the preceding calendar year. In addition, the
15 commissioner may require a licensee or registrant to file special
16 reports as the commissioner considers reasonably necessary for
17 the proper supervision of licensees or registrants under this
18 act. Reports required pursuant to this section shall be in the
19 form prescribed by the commissioner and shall be signed and
20 affirmed. A person who willfully and knowingly subscribes and
21 affirms a false statement in a report required pursuant to this
22 subsection is guilty of a felony, punishable by imprisonment for
23 not more than 15 years.

24 Sec. 25. This act does not apply to:

25 (a) Any depository financial institution whether or not the
26 depository financial institution is acting in a capacity of a
27 trustee or fiduciary.

1 (b) A salesperson acting as an agent for a residential
2 builder or residential maintenance and alteration contractor, or
3 a residential builder or residential maintenance and alteration
4 contractor licensed under article 24 of the occupational code,
5 Act No. 299 of the Public Acts of 1980, being sections 339.2401
6 to 339.2412 of the Michigan Compiled Laws, when a mortgage is
7 made or negotiated in connection with the sale or financing of a
8 residential structure or improvement constructed or improved by
9 that residential builder or residential maintenance and alter-
10 ation contractor.

11 (c) A real estate broker or real estate salesperson licensed
12 under article 25 of Act No. 299 of the Public Acts of 1980, being
13 sections 339.2501 to 339.2515 of the Michigan Compiled Laws, and
14 who is not a mortgage broker, mortgage lender, or mortgage serv-
15 icer, or who only acts as a mortgage broker in connection with a
16 real estate sale or lease and acts without additional compensa-
17 tion beyond the customary commission on such sales or leases.

18 (d) A real estate salesperson who acts for a real estate
19 broker as a mortgage broker, mortgage lender, or mortgage serv-
20 icer and who receives for such services compensation only from
21 the real estate broker for which the salesperson is an agent or
22 employee.

23 (e) A person licensed under Act No. 125 of the Public Acts
24 of 1981, being sections 493.51 to 493.81 of the Michigan Compiled
25 Laws, not making mortgage loans as described in this act in a
26 12-month period from July 1 to June 30.

1 (f) A home improvement installment contract entered into
2 pursuant to the home improvement finance act, Act No. 332 of the
3 Public Acts of 1965, being sections 445.1101 to 445.1431 of the
4 Michigan Compiled Laws.

5 (g) Agencies or corporate instrumentalities of the United
6 States and of this state and its political subdivisions, includ-
7 ing the public employees' retirement system.

8 (h) A mortgage lender which makes 10 or fewer mortgage loans
9 in a 12-month period from July 1 to June 30.

10 (i) A mortgage servicer which services ~~40~~ 50 or fewer
11 mortgage loans in a 12-month period from July 1 to June 30.

12 (j) An individual licensed to practice law in this state and
13 not engaged in the business of negotiating loans secured by real
14 property, when the individual renders services in the course of
15 his or her practice as an attorney at law.

16 (k) A person who makes mortgage loans exclusively for the
17 benefit of employees of that person if the proceeds of the loan
18 are used to assist the employee in meeting his or her housing
19 needs.

20 (l) A person acting as a fiduciary with respect to any
21 employee pension benefit plan qualified under the internal reve-
22 nue code who makes mortgage loans solely to plan participants
23 from plan assets.

24 (m) A mortgage broker, mortgage lender, or a mortgage serv-
25 icer which is a subsidiary or affiliate of a depository financial
26 institution or a subsidiary or affiliate of a holding company of
27 a depository financial institution.