

Act No. 210
Public Acts of 1996
Approved by the Governor
May 22, 1996
Filed with the Secretary of State
May 22, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senator Bouchard

ENROLLED SENATE BILL No. 871

AN ACT to amend sections 1a, 2, 3, 4, 5, 6, 7, 8, 10, 20, 22, 23, 25, and 29 of Act No. 173 of the Public Acts of 1987, entitled "An act to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of the financial institutions bureau and certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties," sections 1a and 4 as amended by Act No. 451 of the Public Acts of 1988, section 2 as amended by Act No. 159 of the Public Acts of 1988, sections 8 and 20 as amended by Act No. 51 of the Public Acts of 1992, and section 25 as amended by Act No. 260 of the Public Acts of 1994, being sections 445.1651a, 445.1652, 445.1653, 445.1654, 445.1655, 445.1656, 445.1657, 445.1658, 445.1660, 445.1670, 445.1672, 445.1673, 445.1675, and 445.1679 of the Michigan Compiled Laws; and to add sections 22a and 34.

The People of the State of Michigan enact:

Section 1. Sections 1a, 2, 3, 4, 5, 6, 7, 8, 10, 20, 22, 23, 25, and 29 of Act No. 173 of the Public Acts of 1987, sections 1a and 4 as amended by Act No. 451 of the Public Acts of 1988, section 2 as amended by Act No. 159 of the Public Acts of 1988, sections 8 and 20 as amended by Act No. 51 of the Public Acts of 1992, and section 25 as amended by Act No. 260 of the Public Acts of 1994, being sections 445.1651a, 445.1652, 445.1653, 445.1654, 445.1655, 445.1656, 445.1657, 445.1658, 445.1660, 445.1670, 445.1672, 445.1673, 445.1675, and 445.1679 of the Michigan Compiled Laws, are amended and sections 22a and 34 are added to read as follows:

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

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

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

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

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

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

(f) "Individual investor" means a person residing in this state or having its principal place of business in this state, other than a bank, savings bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the investment company act of 1940, chapter 686, 15 U.S.C. 80a-1 to 80a-64, pension or profit sharing plan, the assets of which are managed by a bank or trust company or other institutional manager, financial institution, institutional manager, broker-dealer that is a member of the New York stock exchange or registered under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws, the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or a mortgage lender or mortgage servicer.

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

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

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

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

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

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

(k) "Mortgage loan" means a loan secured by a first mortgage on real property located in this state and used, or improved to be used, as a dwelling and designed for occupancy by 4 or fewer families or a land contract covering real property located in this state used, or improved to be used, as a dwelling and designed for occupancy by 4 or fewer families. A mortgage loan does not include a home improvement installment contract under the home improvement finance act, Act No. 332 of the Public Acts of 1965, being sections 445.1101 to 445.1431 of the Michigan Compiled Laws.

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

(m) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(n) "Real estate broker" means a broker or associate broker licensed under article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2518 of the Michigan Compiled Laws.

(o) "Real estate salesperson" means a salesperson licensed under article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2518 of the Michigan Compiled Laws.

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

(q) "Registrant" means a person registered or required to be registered under this act.

(r) "Service" means the collection or remittance, or the right or obligation to collect or remit, for a lender, noteowner, noteholder, mortgage servicer, or the licensee's or registrant's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage loan, mortgage servicing agreement, or an agreement with the 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 performing services as an employee 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, Act No. 161 of the Public Acts of 1988, being sections 487.2051 to 487.2072 of the Michigan Compiled Laws.

(2) No later than 90 days after the effective date of the amendatory act that added this subsection, a person that is licensed to make regulatory loans under the regulatory loan act of 1963, Act No. 21 of the Public Acts of 1939, being sections 493.1 to 493.26 of the Michigan Compiled Laws, or is licensed to make secondary mortgage loans under Act No. 125 of the Public Acts of 1981, being sections 493.51 to 493.81 of the Michigan Compiled Laws, 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 which are subject to this act.

(3) No later than 90 days after the effective date of the amendatory act that added this subsection, 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 subsidiary or affiliate of a depository financial institution holding company, which depository financial institution does not maintain a main office or branch office in this state, shall register under section 6 or shall discontinue all activities which are subject to this act.

(4) 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.

Sec. 3. (1) An application for, or renewal of, a license shall be made in writing to the commissioner on a form prescribed by the commissioner. If the commissioner determines after investigation that the experience, character, business reputation, and general fitness of the applicant and its officers, directors, shareholders, partners, and affiliates command the confidence of the public and warrant the belief that the applicant and its officers, directors, shareholders, partners, and affiliates will comply with the law and that grounds for revoking, suspending, or denying a license under this act do not exist, the commissioner shall issue a license to, or renew the license of, the applicant to act as a mortgage broker, mortgage lender, or mortgage servicer.

(2) A license issued under this section does not approve the use of or indemnify the licensee against claims for the improper use of the business name stated in the license.

Sec. 4. (1) Except as otherwise provided in this section, at the time of filing an application for a license or renewal of a license, the applicant shall do all of the following:

(a) Provide proof of financial responsibility in the following amounts:

(i) \$25,000.00 for an applicant who acts as a mortgage broker and who receives funds from a prospective borrower before the closing of the mortgage loan or who acts as a mortgage lender.

(ii) \$125,000.00 for an applicant who acts as a mortgage servicer.

(b) Provide proof of financial responsibility by 1 of the following:

(i) A corporate surety bond payable to the commissioner, executed by a corporate surety approved by the commissioner, which expires no earlier than the date the license shall expire.

(ii) An irrevocable letter of credit upon which the applicant is the obligor, which expires no earlier than the date the license shall expire, issued by a bank, savings bank, savings and loan association, or credit union the deposits of which are insured by an agency of the federal government, and the terms of which letter of credit are approved by the commissioner.

(2) The bond or letter of credit deposited under subsection (1) shall be conditioned upon the conduct of the business in accordance with the provisions of this act and all rules promulgated by the commissioner, and the payment of all money that becomes due.

(3) In place of depositing a bond or letter of credit, an applicant may pay a nonrefundable administrative fee established by the commissioner not to exceed \$100.00 and furnish 1 of the following as proof of financial responsibility:

(a) Deposit with the state treasurer, under terms prescribed by the commissioner, obligations of the United States, or obligations which are guaranteed fully as to principal and interest by the United States, or any general obligations of any state or any political subdivision of the United States, with a maturity date of 3 years or less, in an amount equal to, or greater than, the amount of the required bond. Interest earned under obligations shall accrue to the account of the applicant.

(b) Deposit with the state treasurer, under terms prescribed by the commissioner, a certificate of deposit of a federally insured financial institution with a maturity date of 3 years or less for an amount payable which is equal to, or greater than, the amount of the required bond and which is not available for withdrawal except by direct order of the commissioner. Interest earned under the certificate shall accrue to the account of the applicant.

(4) Upon application as prescribed by the commissioner, the commissioner may reduce, waive, or modify the requirements under this section for a mortgage servicer who services not more than 300 mortgage loans and who does not collect money for the purpose of paying taxes or insurance pursuant to the mortgage loan.

(5) The commissioner shall waive the requirements of this section and section 5 upon application by a mortgage servicer who is a licensed real estate broker or real estate salesperson, services more than 75 land contracts, has a satisfactory record of compliance with applicable state and federal law, and does not engage in any other activity regulated by this act.

Sec. 5. A licensee who acts as a mortgage broker and who receives funds from a prospective borrower before the closing of the mortgage loan shall maintain a net worth of not less than \$25,000.00. A licensee who acts as a mortgage lender shall maintain a net worth of not less than \$25,000.00. A licensee who acts as a mortgage servicer shall maintain a net worth in an amount determined by the commissioner not exceeding \$100,000.00. Net worth shall be determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license, or renewal of a license, is submitted to the commissioner. Net worth shall be disclosed on a form prescribed by the commissioner

or on a form prepared or reviewed by a certified public accountant and shall be computed in accordance with generally accepted accounting principles. The following assets shall 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 that of the applicant.
- (b) Any asset except construction loans receivable, secured by first mortgages from related companies, due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest.
- (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, which is greater than the market value of the assets.
- (e) Good will or value placed on insurance renewals or property management contract renewals or other similar intangible value.
- (f) Organization costs.

Sec. 6. (1) The following shall register with the commissioner on a form prescribed by the commissioner:

- (a) A mortgage broker, mortgage lender, or mortgage servicer approved as a seller or servicer by the federal national mortgage association or the federal home loan mortgage corporation.
 - (b) A mortgage broker, mortgage lender, or mortgage servicer approved as an issuer or servicer by the government national mortgage association.
 - (c) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2518 of the Michigan Compiled Laws, who acts as a mortgage broker for not more than 1 licensee or 1 registrant, or who acts as a mortgage broker, mortgage lender, or mortgage servicer only in connection with real estate sales in which the real estate broker or salesperson affiliated with the real estate broker is engaged and who receives for such services additional compensation beyond the customary commission on real estate sales.
 - (d) A mortgage broker, mortgage lender, or mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company if the depository institution does not maintain a main office or a branch office in this state.
- (2) A registrant is not required to comply with section 3, 4, or 5 and is not subject to annual examination by the commissioner.
- (3) A mortgage broker, mortgage lender, or a mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution shall not be subject to section 29(1)(b) or (c).
 - (4) Notwithstanding section 25(m), a mortgage broker, mortgage lender, or a mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution may register and become subject to the provisions of the act applicable to registrants.
 - (5) If a real estate broker or real estate salesperson acts as a mortgage broker, mortgage lender, or mortgage servicer not in connection with real estate sales in which the real estate broker or real estate salesperson affiliated with the real estate broker is engaged, the real estate broker or real estate salesperson shall be licensed or registered as otherwise required under this act.
 - (6) A real estate broker or real estate salesperson, in connection with real estate sales in which the real estate broker or real estate salesperson affiliated with the real estate broker is engaged, who acts as a mortgage broker on 10 or fewer mortgage loans in any 12-month period from July 1 to June 30 and who receives for such services additional compensation beyond the customary commission on real estate sales shall be exempt from the registration or licensing requirements of this act for that 12-month period. If the broker and all real estate salespersons affiliated with the broker in aggregate brokered more than 30 mortgage loans as described in this subsection in the same 12-month period from July 1 to June 30, then such broker shall obtain a license or shall register as required by this act.
 - (7) A registration accepted by the commissioner under this section does not approve the use of or indemnify the registrant against claims for the improper use of the business name stated in the registration.

Sec. 7. (1) A registration or license, unless it is renewed, shall expire June 30 of each year. A registration or license may be renewed by filing a registration or an application for license renewal and paying the annual operating fee for the succeeding year. The registration or application and payment shall be received by the commissioner on, or before, June 15 of each year.

(2) Not later than 90 days after the close of the fiscal year of a licensee or registrant, the licensee or registrant shall annually deliver to the commissioner a financial statement for the fiscal year prepared from the licensee's or registrant's books and records. At the licensee's or registrant's option, the financial statement may be any of the following:

- (a) A form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which report the licensee or registrant represents to the commissioner to be true and complete.

(c) In a format prepared and certified by an independent certified public accountant licensed by a regulatory authority of any state or political subdivision of the United States.

Sec. 8. (1) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, the applicant shall pay to the commissioner a fee for investigating the applicant and the minimum annual operating fee established by the commissioner under subsection (3). To renew a license that has not been suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee. At the time of filing a registration or a renewal of a registration, a registrant shall pay to the commissioner an annual operating fee as provided by subsection (3).

(2) If the initial or renewed license or registration as provided in subsection (1) would have an effective date within 6 months of the expiration date provided for in section 7, the initial or renewal annual operating fee for that license or registration shall be 1/2 of the annual operating fee.

(3) The commissioner shall annually establish the schedule of fees sufficient to pay, but not to exceed, the bureau's reasonably anticipated costs of administering this act. The fees are as follows:

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

(b) Except as set forth in subdivision (c), a licensee or registrant annually shall pay an operating fee based upon the number of closed mortgage loans the licensee or registrant brokered to other parties, the number of mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of loans serviced by the licensee or registrant as of December 31 of the previous calendar year. The operating fee during the first year after enactment of this amendatory language shall be not less than \$250.00 and not more than \$2,500.00. Thereafter, in the discretion of the commissioner, subject to the limitation set forth in this subsection, the maximum operating fee may be increased at an annual rate of not more than 10% in the second, third, and fourth years following enactment, and in the fifth and subsequent years, at an annual rate of not more than the annual increase for the immediately preceding 12-month period in the Detroit consumer price index as reported by the United States department of labor. For purposes of this subdivision, "mortgage loan" includes only mortgage loans subject to this act.

(c) For amending or reissuing a license or registration, not less than \$50.00 or more than \$200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by bureau employees who travel out of state to examine the records of the licensee or investigate the licensee or registrant and the cost of independent investigators employed under section 20(1)(e).

(4) Fees received pursuant to this act are not refundable.

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

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

(7) A licensee or registrant whose license or registration renewal fee is not received on or before June 30 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(8) Money received under this act shall be deposited in the state treasury and credited to the financial institutions bureau to be used only for the operation of the financial institutions bureau.

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

Sec. 10. (1) A licensee or registrant may surrender a license or registration by delivering to the commissioner the license or registration with written notice that the licensee or registrant surrenders the license or registration. The surrender, revocation, or suspension of a license or registration under this act shall not affect the licensee's or registrant's civil or criminal liability for acts committed prior to the surrender, revocation, or suspension. The surrender of a license or registration does not affect a proceeding to suspend or revoke a license or registration.

(2) Except as otherwise provided by law, a revocation, suspension, or surrender of a license or registration shall not impair or affect the obligation of a preexisting contract between the licensee or registrant and another person.

(3) A licensee or registrant whose license or registration has been destroyed or lost may comply with this section by submitting to the commissioner a notarized affidavit of the loss accompanied by written notice that the licensee or registrant surrenders the license or registration.

Sec. 20. (1) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

(a) Compel the attendance of a person by subpoena.

(b) Administer oaths.

(c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.

(d) Have free access during regular business hours to the offices, places of business, or other location where the licensee or registrant, or an affiliate of a licensee or registrant, maintains business related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation shall be confidential and shall not be available for public inspection or copying, or divulged to any person, except as provided in this section. The information may be disclosed as follows:

(i) To the attorney general.

(ii) To any regulatory agency.

(iii) In connection with an enforcement action brought pursuant to this or another applicable act.

(iv) To law enforcement officials.

(v) To persons authorized by the Ingham county circuit court to receive the information.

(e) Employ independent investigators to conduct a part or all of the investigation, in the case of an investigation other than an examination.

(2) A person subpoenaed under this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena, or to produce books, accounts, records, files, or documents required by the commissioner, or who refuses to be sworn or, unless permitted by law, refuses to answer as a witness, is guilty of a misdemeanor.

(3) Unless circumstances warrant additional examinations, the commissioner is entitled to conduct 1 examination of each licensee during the calendar year. The commissioner may conduct an investigation of a licensee or registrant against whom a complaint has been filed.

Sec. 22. It shall be a violation of this act if a licensee or registrant:

(a) Does not conduct the business in accordance with law, or has violated any other provision of this act, or a rule promulgated or order issued under this act.

(b) Engages in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

(c) Intentionally or due to gross or wanton negligence, repeatedly fails to provide borrowers material disclosures of information as required by state or federal law.

(d) Suppresses or withholds from the commissioner any information that the licensee or registrant possesses and that, if submitted, would have made the licensee or registrant ineligible for licensing or registration under this act or would have warranted the commissioner's denial of a license application or refusal to accept a registration.

(e) Violates any provision of Act No. 125 of the Public Acts of 1966, being sections 565.161 to 565.163 of the Michigan Compiled Laws, regulating the handling of mortgage escrow accounts by mortgagees.

(f) Until proper disbursement is made, fails to place in a trust or escrow account held by a federally insured depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by a mortgage broker, mortgage lender, or mortgage servicer that is the portion of a payment on a mortgage loan that the person is obligated to pay to a third party, including amounts paid to the holder of the mortgage loan, amounts for property taxes and insurance premiums, or amounts paid under an agreement that requires if the mortgage loan is not closed the amounts paid shall be refunded to the prospective borrower or if the mortgage loan is closed the amounts paid shall be applied to fees and costs incurred at the time the mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the mortgage loan application, to obtain an appraisal, or to receive a credit report.

(g) Refuses to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner pursuant to this act.

(h) Is convicted of a felony, or any misdemeanor of which an essential element is fraud.

(i) Refuses or fails to pay, within a reasonable time, those expenses assessed to the licensee or registrant pursuant to this act.

(j) Fails to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fails to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(k) Fails to make a mortgage loan pursuant to, and in accordance with, a written commitment to make a mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment prior to the expiration of the commitment.

(l) Requires a prospective borrower to deal exclusively with the licensee or registrant in regard to a mortgage loan application.

(m) Takes a security interest in real property before closing the mortgage loan to secure payment of fees assessed in connection with a mortgage loan application.

Sec. 22a. (1) A licensee or registrant shall not, directly or indirectly, make a false, misleading, or deceptive advertisement regarding mortgage loans or the availability of mortgage loans.

(2) A licensee shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions, to mortgage loan applicants who meet the standards or qualifications prescribed by the licensee.

Sec. 23. (1) A licensee or registrant may require a borrower to pay reasonable and necessary charges which are the actual expenses incurred by the licensee or registrant in connection with the making, closing, disbursing, extending, readjusting, or renewing of a mortgage loan and a loan processing fee. The charges shall be in addition to interest authorized by law, and are not a part of the interest collected or agreed to be paid on the mortgage loan within the meaning of the law of this state which limits the rate of interest which may be exacted in a transaction. The charges shall be paid only once by the borrower to the licensee or registrant. This section is not intended to override the federal preemption of state usury laws contained in the depository institutions deregulation and monetary control act of 1980, Public Law 96-221.

(2) A licensee or registrant which assesses or accepts a fee to guarantee a specified rate of interest on a mortgage loan shall specify the terms and conditions of the guarantee in writing. The terms and conditions of the guarantee shall not extend beyond the expiration of the guarantee unless extended in writing by all the parties.

Sec. 25. This act does not apply to the following:

(a) A depository financial institution whether or not the depository financial institution is acting in a capacity of a trustee or fiduciary.

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

(c) A real estate broker or real estate salesperson who is not a mortgage broker, mortgage lender, or mortgage servicer, or who only acts as a mortgage broker in connection with a real estate sale or lease and acts without additional compensation beyond the customary commission on such sales or leases.

(d) A real estate salesperson who acts for a real estate broker as a mortgage broker, mortgage lender, or mortgage servicer and who receives for such services compensation only from the real estate broker for which the salesperson is an agent or employee.

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

(f) Agencies or corporate instrumentalities of the United States and of this state and its political subdivisions, including the public employees' retirement system.

(g) A mortgage lender that in the aggregate with any affiliates makes 10 or fewer mortgage loans in a 12-month period from July 1 to June 30.

(h) A mortgage servicer that in the aggregate with any affiliates services 10 or fewer mortgage loans in a 12-month period from July 1 to June 30.

(i) A mortgage servicer that in the aggregate with any affiliates services only 75 or fewer land contracts, of which 10 or fewer require the collection of money for the payment of taxes or insurance. This subdivision and subdivision (h) do not exempt a mortgage servicer who collects money for the payment of taxes or insurance from the provisions of Act No. 125 of the Public Acts of 1966, being sections 565.161 to 565.164 of the Michigan Compiled Laws. All fees shall be returned to any mortgage servicer described in this subdivision who applied for a license and paid the fees required by this act and who on December 27, 1988 is exempted from licensing.

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

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

(l) A person acting as a fiduciary with respect to any employee pension benefit plan qualified under the internal revenue code who makes mortgage loans solely to plan participants from plan assets.

(m) A mortgage broker, mortgage lender, or a mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution which depository financial institution maintains its main office or a branch office in this state.

(n) A nonprofit corporation established pursuant to the neighborhood reinvestment corporation act, title VI of Public Law 95-557, 42 U.S.C. 8101 to 8107.

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

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

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

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

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

(iii) A construction loan.

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

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

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

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

(A) The broker-dealer is registered under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.

(B) The broker-dealer is not an affiliate of the mortgage lender unless the person acquired the broker-dealer registration, directly or indirectly, before September 1, 1987 under Act No. 265 of the Public Acts of 1964, was affiliated with a mortgage lender before September 1, 1987, and has continuously maintained that registration subsequent to September 1, 1987. For purposes of this subparagraph, if an aggregate of more than 10% of the outstanding voting stock or interest in a corporation, unincorporated organization, partnership, or other legal entity that is a broker-dealer or mortgage lender is sold, transferred, assigned, or otherwise conveyed subsequent to September 1, 1987, the registration shall be considered to not have been continuously maintained.

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

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

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

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

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

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

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

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

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

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule shall constitute a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee or registrant to ensure that the violation will not be repeated, and the record of the licensee or registrant in complying with this act. Any proceedings under this subsection shall be subject to the procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

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

Sec. 34. (1) The commissioner shall prioritize and pay claims against a proof of financial responsibility filed with the commissioner under section 4 in a manner that, in his or her discretion, best protects the public interest.

(2) Claims may only be filed against a licensee's proof of financial responsibility as provided under this section by the licensee's borrowers, mortgage loan applicants, loan servicing customers, and the commissioner.

(3) Claims filed against a proof of financial responsibility by a borrower or loan applicant shall involve only mortgage loans or mortgage applications secured or to be secured by residential real property located in this state. The amount of the claim shall not exceed actual fees in connection with a loan application, overcharges of principal and interest, and excess escrow collections charged by the licensee and paid by the claimant to the licensee.

(4) The commissioner may file a claim against a proof of financial responsibility for payment of fines or fees due and payable to the commissioner or the bureau and reimbursement of expenses incurred in investigating the licensee and expenses incurred in distributing proceeds of the proof of financial responsibility. A claim filed under this subsection shall be paid in full prior to payment of other claims against a proof of financial responsibility, unless the commissioner, in his or her discretion, waives in whole or in part the right to priority of payment.

(5) In the event that valid claims exceed the amount of the proof of financial responsibility, each claimant shall be entitled only to a pro rata amount of his or her valid claim.

Section 2. Section 8 of Act No. 173 of the Public Acts of 1987, as amended by this amendatory act, shall take effect July 2, 1996.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.