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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997

Introduced by Senator Bouchard

ENROLLED SENATE BILL No. 413

AN ACT to amend 1981 PA 125, entitled "An act to define and regulate secondary mortgage loans; to prescribe powers and duties of the financial institutions bureau and certain state agencies; to provide for the establishment of a financial institutions bureau operations fund; to provide for the promulgation of rules; and to provide for civil fines and penalties," by amending the title and sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 29, and 30 (MCL 493.51, 493.52, 493.53, 493.54, 493.55, 493.56, 493.58, 493.59, 493.60, 493.61, 493.62, 493.63, 493.64, 493.65, 493.67, 493.68, 493.70, 493.71, 493.72, 493.73, 493.74, 493.75, 493.76, 493.77, 493.79, and 493.80), the title and sections 1, 21, 22, and 27 as amended by 1995 PA 164, section 2 as amended by 1988 PA 164, sections 4, 8, 14, and 26 as amended by 1992 PA 77, and section 30 as amended by 1984 PA 124, and by adding sections 3a, 6a, 6b, and 12a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act to regulate secondary mortgage loans; to prescribe powers and duties of certain state agencies and officials; to require certain fees; to provide for the establishment of a revolving fund; to provide for the promulgation of rules; and to prescribe civil fines and penalties.

Sec. 1. (1) This act shall be known and may be cited as "the secondary mortgage loan act".

(2) As used in this act:

(a) "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 attempting to obtain a secondary mortgage loan.

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

(b) "Commissioner" means the commissioner of the financial institutions bureau of the department of consumer and industry services and any authorized representatives of the commissioner.

(c) "Depository financial institution" means a state or nationally chartered bank, state or federal chartered savings and loan association, state or federal chartered savings bank, or state or federal chartered credit union, or any other institution whose deposits are insured by an agency of the federal government.

(d) "Exclusive broker" means a person that brokers secondary mortgage loans solely to 1 licensee or registrant, is compensated solely by that licensee or registrant, and is indemnified by the licensee or registrant as provided in section 6. The actions or practices of an exclusive broker in brokering a secondary mortgage loan are the actions or practices of the licensee or registrant.

(e) "Lender" means a person who, directly or indirectly, makes or offers to make secondary mortgage loans.

(f) "Licensee" means a person licensed or required to be licensed under this act. A licensee does not include a depository financial institution.

(g) "Loan servicing customer" means a mortgagor whose secondary mortgage loan is being serviced by a servicer.

(h) "Open-end credit" means credit extended under a plan in which both of the following apply:

(i) The licensee or registrant reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

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

(j) "Registrant" means a person registered or required to be registered under this act. A registrant does not include a depository financial institution.

(k) "Secondary mortgage loan" means a loan that is not to be repaid within 90 days, that is made to a person for personal, family, or household purposes, and that is secured by a mortgage upon an interest in real property used as a dwelling if the property is subject to a lien of 1 or more prior mortgages. The loan may be secured by other collateral in addition to real property. Notwithstanding the place of execution, nominal or real, of a secondary mortgage loan, if the real property that secures the loan is located in this state, the secondary mortgage loan is subject to this act and all other applicable laws of this state.

(l) "Service" means the collection or remittance for a lender, noteowner, noteholder, or the licensee's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a secondary mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

(m) "Servicer" means a person who, directly or indirectly, services or offers to service secondary mortgage loans.

Sec. 2. (1) Except for a person licensed under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, a depository financial institution, or an exclusive broker, a person shall not act as a broker, lender, or servicer without first obtaining a license or registration as provided by this act.

(2) A person is acting as a broker if the person acts as a broker in connection with 1 or more secondary mortgage loans.

(3) A person is acting as a lender if the person makes or negotiates more than 2 secondary mortgage loans in a calendar year.

(4) A person is acting as a servicer if the person services more than 10 secondary mortgage loans in a calendar year.

(5) Within 90 days after the effective date of the amendatory act that added this subsection, a servicer that was exempt from regulation under this act shall either file with the commissioner an application for a license or registration under section 3 or discontinue all activities subject to this act.

(6) A natural person who is an employee of only 1 licensee or registrant is not required to obtain a license or be registered under this act.

(7) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, a person subject to this act shall not include in its name or assumed name the words "bank", "banker", "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 to use the term "mortgage banker" or "mortgage banking" in its name or assumed name.

(8) A person subject to this act whose name or assumed name on January 1, 1997 contained a word prohibited by subsection (7) may continue to use that name or assumed name.

Sec. 3. (1) An application for a license or registration under this act shall be in writing, under oath, and in the form prescribed by the commissioner.

(2) The application shall state the name, residence, and business addresses of the applicant, each member if the applicant is a partnership, association, or limited liability company, and of each officer, director, and stockholder if the applicant is a corporation.

Sec. 3a. The following persons shall register with the commissioner on a form prescribed by the commissioner:

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

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

(c) A broker, lender, or servicer that is licensed under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or a registrant under that act if the registrant is 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, or a mortgage broker, mortgage lender, or mortgage servicer approved as an issuer or servicer by the government national mortgage association.

(d) A broker, lender, or servicer that 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.

Sec. 4. (1) At the time of making an application for a license, the applicant shall pay to the commissioner a fee for investigating the applicant as provided by section 6a.

(2) At the time of making an application for license or registration and annually thereafter, the applicant shall pay an annual operating fee as provided in section 6a.

Sec. 5. (1) Upon the filing of an application for a license and the payment of the required fees and the filing of proof of financial responsibility as the commissioner requires, the commissioner shall investigate the facts. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant for a license, and, as applicable, the applicant's shareholders, directors, officers, partners, members, and trustees command the confidence of the community and warrant the belief that the business will be operated lawfully, honestly, fairly, and efficiently as required by this act, the commissioner shall issue to the applicant a license to engage in the business of brokering, making, or servicing secondary mortgage loans under this act.

(2) For an applicant for a registration, the commissioner shall approve the application if the commissioner finds that the applicant meets any 1 of the requirements of section 3a.

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

(4) The commissioner may refuse to issue a license for any reason for which the commissioner may suspend, revoke, or refuse to renew a license under section 11.

Sec. 6. (1) Except as otherwise provided in this section, at the time of filing an application for a license or registration or renewal of a license or registration, an applicant shall do all of the following:

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

(i) \$25,000.00 for a license or registration to act as a broker who receives funds from a prospective borrower before the closing of the secondary mortgage loan or who acts as a lender. An additional \$20,000.00 is required for each exclusive broker through which the applicant conducts business regulated by this act. In no event shall the additional amount required by this subsection be in excess of \$1,000,000.00.

(ii) \$125,000.00 for a license or registration to act as a servicer. An additional \$20,000.00 is required for each exclusive broker through which the applicant conducts business regulated by this act. In no event shall the additional amount required by this subsection be in excess of \$1,000,000.00.

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

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

(ii) An irrevocable letter of credit upon which the applicant for a license or registration is the obligor, which expires no earlier than the date the license or registration expires, issued by a depository financial institution with terms approved by the commissioner.

(2) A licensee or registrant that conducts business regulated by this act through 1 or more exclusive brokers shall enter into an indemnification agreement, subject to the approval of the commissioner, to protect borrowers from monetary damages that may result from doing business with the exclusive brokers through which the licensee or registrant conducts business regulated by this act. The indemnification shall be provided in the amount and form required by subsection (1).

(3) The bond or letter of credit required under subsection (1) shall be conditioned upon the licensee or registrant conducting its business as required by this act and all the rules promulgated under this act, and the payment of all money that becomes due to borrowers, secondary mortgage loan applicants, and the commissioner.

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

(5) Claims may only be filed against a licensee's or registrant's proof of financial responsibility by the commissioner and the licensee's or registrant's borrowers, secondary mortgage loan applicants, and loan servicing customers.

(6) Claims filed against a proof of financial responsibility by a borrower or loan applicant shall involve only secondary mortgage loans or secondary mortgage loan applications secured or to be secured by real property used as a dwelling 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 by the licensee or registrant.

(7) The commissioner may file a claim against a proof of financial responsibility for payment of fines or fees due and payable to the commissioner and reimbursement of expenses incurred in investigating the licensee or registrant 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.

(8) 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.

(9) A licensee that acts as a broker and that receives funds from a prospective borrower before the closing of the secondary mortgage loan shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a lender shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a servicer shall maintain a net worth of not less than \$100,000.00.

(10) Net worth under subsection (9) 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) An asset, except construction loans receivable, secured by 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. 6a. (1) A registration or license, unless it is renewed, shall expire on December 31 of each year. A registration or license may be renewed by filing an application for license or registration renewal and paying the annual operating fee for the succeeding year. The application and payment shall be received by the commissioner on, or before, December 15 of each year.

(2) Not later than 90 days after 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) On a form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which 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.

(3) A registrant that is a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that timely files with the commissioner the financial statement required under section 7 of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1657, is exempt from the filing requirement of subsection (2).

(4) 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 for a license shall pay to the commissioner a fee for investigating the applicant for a license and the annual operating fee established by the commissioner under subsection (5). To renew a license or registration that has not been suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee.

(5) If the initial license or registration would have an effective date of July 1 or later, the initial annual operating fee for that license shall be 1/2 of the annual operating fee.

(6) The commissioner shall annually establish a schedule of fees sufficient to pay, but not to exceed, the financial institutions bureau's reasonably anticipated costs of administering this act. The fee schedule is as follows:

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

(b) An annual operating fee based upon the number of secondary mortgage loans the licensee or registrant brokered to other parties that were closed during the previous calendar year, the number of secondary mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of secondary mortgage loans

served by the licensee or registrant as of December 31 of the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under subsection (13).

(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 employees of the financial institutions bureau who travel out of state to examine or investigate the records of the licensee or registrant and the cost of independent investigators employed under section 6b(3)(e).

(7) Fees received under this act are not refundable.

(8) 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 and penalties together with interest and costs.

(9) A licensee or registrant that fails to submit to the commissioner the reports as required by subsections (2) and (13) is subject to a penalty of \$25.00 for each day a required report is delinquent or \$1,000.00, whichever is less.

(10) A license or registration renewal fee that is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(11) 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.

(12) The annual operating fees set by the commissioner shall not exceed the levels needed to cover the estimated cost of enforcement of this act.

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

Sec. 6b. (1) The commissioner shall exercise general supervision and control over brokers, lenders, and servicers doing business in this state.

(2) In addition to the other powers granted by this act, the commissioner may do any of the following:

(a) Deny an application for a license or registration.

(b) Conduct examinations and investigations of any person, as necessary for the efficient enforcement of this act and the rules promulgated under this act.

(c) Investigate complaints filed against licensees or registrants.

(d) Advise the attorney general or the prosecuting attorney of the county in which the business is conducted that the commissioner believes a licensee, registrant, or person is violating this act. The attorney general or prosecuting attorney shall bring a legal action to enjoin the operation of the business or prosecute violations of this act.

(e) Bring an action in the Ingham county circuit court to enjoin a person from participating in, continuing to practice, or from engaging in a practice that is an unsafe or injurious practice or that violates this act or a rule promulgated under this act.

(f) Order a person to cease and desist from a violation of this act or a rule promulgated under this act in accordance with the procedural requirements set forth in section 14.

(g) Suspend, revoke, or refuse to issue a license or registration in accordance with section 11.

(h) Assess a civil fine in accordance with section 27.

(i) Appoint a conservator in accordance with section 12a.

(j) Censure a licensee or registrant.

(3) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

(a) Issue a subpoena as permitted by section 15.

(b) Administer oaths as permitted by section 15.

(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, 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 is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be available for public inspection or copying or divulged to any person except as follows:

- (i) To the attorney general.
 - (ii) To a regulatory agency.
 - (iii) In connection with an enforcement action brought under 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.

Sec. 8. (1) The commissioner may issue an order summarily suspending a license or registration under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, supported by an affidavit that an imminent threat of financial loss or imminent threat to the public welfare exists. The order to summarily suspend a license or registration shall be served upon the licensee or registrant.

(2) A licensee or registrant upon which an order to summarily suspend its license or registration has been served shall have 20 days after the date of service of the order within which to file with the commissioner a request for a hearing.

(3) A hearing shall be promptly held upon receipt of a request for a hearing filed by a licensee or registrant.

(4) A summary suspension of a license or registration shall continue until the commissioner finds that the imminent threat of financial loss and imminent threat to the public welfare no longer exist.

(5) The record created at the hearing of the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

Sec. 9. A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license or registration shall be in addition to an informal conference, criminal prosecution, or proceeding to deny, revoke, or suspend a license or registration, or any other legal action.

Sec. 10. (1) Any person may file a complaint with the commissioner alleging that a licensee or registrant has violated this act or a rule promulgated or an order issued under this act.

(2) The commissioner may forward the complaint to the licensee or registrant against which the complaint is filed.

(3) The commissioner shall request that the licensee or registrant respond to the complainant and provide the commissioner with a copy of the response within a specified period. If the licensee or registrant fails to respond to the complainant within the specified period, or fails to handle the complaint to the satisfaction of the commissioner, the commissioner may commence an investigation or administrative action against the licensee or registrant.

Sec. 11. (1) A notice shall be given to a licensee, registrant, or applicant of the commissioner's intention to enter an order to suspend or revoke a license or registration or to refuse to issue a license or registration. The notice shall be in writing, served personally, or sent by certified mail to the licensee, registrant, or applicant.

(2) The licensee, registrant, or applicant may request a hearing to contest the intention to enter an order or refusal within 20 days after service of the notice. If a hearing regarding suspension, revocation, or refusal to issue a license or registration is not requested, the commissioner shall enter a final order regarding the suspension, revocation, or refusal to issue a license or registration. The hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The commissioner may suspend, revoke, or refuse to issue or renew a license or registration if he or she finds that the licensee or registrant or an owner, director, officer, member, partner, stockholder, employee, or agent of the licensee or registrant has done any of the following:

- (a) Made a material misstatement in the application.
- (b) Engaged in fraud, deceit, or material misrepresentation in connection with any transaction subject to this act.
- (c) Failed after 10 days' written notice of default, to pay the annual operating fee, to maintain in effect the bond as required by the commissioner, or to comply with a demand, ruling, or requirement of the commissioner lawfully made under this act.
- (d) Either knowingly or without the exercise of due care to prevent it, violated this act or a rule promulgated under this act.
- (3) The commissioner may suspend, revoke, or refuse to renew a license or registration upon a finding of a fact or condition which, if the fact or condition had existed at the time of the original application for the license or registration, clearly would have warranted the commissioner to refuse to issue the license or registration originally.

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

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

(6) A licensee or registrant whose license or registration certificate 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. 12. (1) This act does not prevent a person whose license or registration has been suspended or revoked from continuing to service secondary mortgage loans under servicing contracts in existence at the time of the suspension for a period not to exceed 6 months after the date of the entry of the final decision in the contested case suspending or revoking the license or registration.

(2) In the event of a summary suspension or revocation, the commissioner shall have discretion to order the licensee or registrant to cease all activities including the servicing of secondary mortgage loans and the closing of secondary mortgage loans under any commitments to make secondary mortgage loans issued by a person prior to the suspension or revocation.

(3) For an administrative action other than a summary suspension or revocation, this act does not prevent a person whose license or registration has been suspended or revoked from making a secondary mortgage loan under a commitment to make a secondary mortgage loan issued by the person prior to the suspension or revocation. A person who received a commitment issued by a person whose license or registration has been suspended or revoked may, prior to closing the loan, terminate the commitment and receive a refund of all money paid to the person.

Sec. 12a. (1) Notwithstanding section 12, if the commissioner determines that a licensee or registrant is, intentionally or as a result of gross or wanton negligence, not servicing secondary mortgage loans as required by this act or the terms of the servicing contracts, the commissioner may appoint a conservator for the licensee or registrant and require the conservator to provide a bond or security as the commissioner considers necessary. The commissioner may appoint as conservator 1 of the employees of the financial institutions bureau or some other competent and disinterested person. The financial institutions bureau shall be reimbursed out of the assets of the conservatorship for actual expenses incurred in connection with the conservatorship. The amount reimbursed shall be paid into the revolving fund provided for in subsection (4). The expenses shall be a first charge upon the assets of the licensee or registrant and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

(2) The conservator, under the direction of the commissioner, shall take sole control of all the affairs of the licensee or registrant and the possession of the books and records of the licensee or registrant. The licensee or registrant may transfer or assign the rights to service secondary mortgage loans to a person approved by the commissioner. The conservator of the licensee or registrant shall take such action as may be necessary to assure that the secondary mortgage loans are serviced as required by this act and the servicing contracts.

(3) If the commissioner is satisfied that termination of the conservatorship may be done safely and is in the public interest, the commissioner may terminate the conservatorship and permit the licensee or registrant to resume the servicing of secondary mortgage loans subject to any terms, conditions, and limitations as prescribed by the commissioner.

(4) All compensation and expenses required to be reimbursed to the financial institutions bureau in connection with a conservatorship and all expenses for state supervision of conservatorship under this act shall be deposited in the state treasury and shall be directed to a financial institutions bureau revolving fund. Money in the fund and any interest earned shall only be disbursed on proper vouchers, approved by the commissioner, to reimburse the financial institutions bureau for expenses incurred by the bureau in connection with conservatorships of licensees or registrants.

Sec. 13. (1) A license or registration remains in force until the date of expiration or until surrendered, revoked, or suspended under this act. The commissioner may reinstate a suspended license or registration or issue a new license or registration to a licensee or registrant whose license or registration has been revoked if the conditions under which the license or registrant was revoked have been corrected and the commissioner is satisfied, as the result of an investigation, that the conditions are not likely to recur.

(2) A license or registration shall not be transferred or assigned without the consent of the commissioner.

(3) The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee or registrant which is a corporation, or more than 25% of the interest in a licensee or registrant which is a partnership or other unincorporated legal entity, shall be considered to be a transfer of the license or registration.

Sec. 14. (1) If in the opinion of the commissioner a licensee or registrant is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare, or is, has, or is about to violate a law or rule, the commissioner may serve a notice as provided in subsection (2).

(2) A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee or registrant. The hearing shall be held not earlier than 30 days nor later than 60 days after service of the notice unless another date is set by the commissioner at the request of the licensee or registrant.

(3) If the licensee or registrant fails to appear at the hearing by a duly authorized representative, the licensee or registrant shall have consented to the issuance of the cease and desist order.

(4) In the event of consent under subsection (3), or if upon the record made at the hearing, the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee or registrant an order to cease and desist from the practice or violation. The order may require the licensee or registrant and its directors, officers, members, partners, trustees, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(5) If the commissioner issues a cease and desist order in conjunction with a summary suspension order, the cease and desist order shall become effective on the date of service.

(6) A cease and desist order issued upon consent shall become effective at the time specified in the order and remain effective and enforceable as provided in the order.

(7) Except as provided in subsections (5) and (6) and to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order shall become effective at the expiration of 30 days after the service of the order upon the licensee or registrant.

Sec. 15. (1) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence, in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to a person whose testimony is required.

(2) A person subpoenaed under this section who willfully refuses or 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.

Sec. 17. (1) A licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the commissioner to enable the commissioner to determine whether the business of the licensee or registrant is conducted as required by this act and the rules promulgated under this act.

(2) The preservation of records by reproduction under the records media act, 1992 PA 116, MCL 24.401 to 24.403, constitutes compliance with this section.

(3) If the books, accounts, records, and documents are not made available in this state, the licensee or registrant shall pay the reasonable travel, lodging, and meal expenses of the examiner as provided in section 6a(6)(d).

(4) If a licensee or registrant that is a servicer, in connection with a secondary mortgage loan, requires a mortgage escrow account, the licensee or registrant shall deliver to the borrower annually a statement of the borrower's account showing the unpaid principal balance of the secondary mortgage loan at the end of the immediately preceding 12-month period, the interest paid during the period, and the amount deposited into escrow and disbursed from escrow during the period.

(5) Within 25 days after receipt of a written request from the borrower, a servicer shall deliver to the borrower a ledger history of the borrower's account showing the date and amount of all payments made or credited to the account for the immediately preceding 12-month period, and the total unpaid balance.

(6) A servicer is not obligated to furnish to the borrower more than 1 annual statement and 1 ledger history upon written request of the borrower in a 12-month period.

(7) A fee shall not be charged the borrower under subsection (4) for the annual statement or for 1 ledger history furnished to the borrower in a 12-month period.

Sec. 18. (1) A licensee or registrant shall preserve and keep available for examination by the commissioner each secondary mortgage loan document in its possession or control, including the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the secondary mortgage loan is transferred or assigned, or the expiration of 2 years after the date the secondary mortgage loan is closed, whichever occurs first.

(2) If the secondary mortgage loan is transferred or assigned, the licensee or registrant shall preserve and keep available for examination by the commissioner copies of the promissory note, mortgage, truth-in-lending disclosure

statement, and settlement statement in its possession or control for 2 years after the date the secondary mortgage loan is transferred or assigned.

(3) Notwithstanding any other provision of this act, each licensee or registrant shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a secondary mortgage loan for the period of time required by state or federal law.

(4) A licensee or registrant shall preserve all other books, accounts, records, and documents pertaining to the licensee's or registrant's business and keep them available for examination by the commissioner for not less than 2 years after the conclusion of the fiscal year of the licensee or registrant in which the book, account, record, or document was created.

Sec. 20. A licensee or registrant shall not make or offer to make a secondary mortgage loan except on the terms and conditions authorized by this act and the rules promulgated under this act.

Sec. 21. (1) A licensee or registrant may charge, contract for, receive, or collect on a secondary mortgage loan an interest rate not exceeding the interest rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. Interest on a secondary mortgage loan under this act shall not be added or deducted in advance but shall be computed on the basis of the actual unpaid balance of the principal of the loan on a daily or monthly basis for the time actually outstanding until the loan is paid in full.

(2) This section does not prohibit a lender from offering the borrower, in connection with a secondary mortgage loan that involves other than open-end credit, an option to pay a prepaid finance charge in exchange for a lower contract interest rate or to charge a prepayment fee in the amount permitted under section 1c of 1966 PA 326, MCL 438.31c.

Sec. 22. (1) Other charges and fees shall not be made, directly or indirectly, in connection with the making of a secondary mortgage loan, except for any of the following, which may be included in the principal of the loan:

(a) Charges for credit life insurance or credit accident and health insurance as defined in the credit insurance act, 1958 PA 173, MCL 550.601 to 550.624, or any other insurance under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, that is offered by the licensee or registrant and that may be purchased at the option of the borrower.

(b) Reasonable and necessary charges that are the actual expenses incurred by the licensee, registrant, or exclusive broker in connection with the making, closing, disbursing, extending, readjusting, or renewing of a secondary mortgage loan.

(c) A nonrefundable processing fee that is not more than 5% of the gross amount of the loan.

(d) Other charges as authorized by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(e) A reasonable annual fee for the privilege of receiving open-end credit from the licensee or registrant.

(2) The charges authorized by this section 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 secondary mortgage loan within the meaning of the law of this state that 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.

(3) Any insurance sold by a licensee or registrant shall be in accordance with the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or the credit insurance act, 1958 PA 173, MCL 550.601 to 550.624.

(4) If a licensee or registrant requires a borrower to purchase hazard insurance, the licensee or registrant shall not require the borrower to purchase the insurance through a particular agency or agent or from a particular insurer.

(5) This section does not prohibit a licensee or registrant from imposing the charges that are permitted by any federal lending program designed to promote the making of secondary mortgage loans.

Sec. 23. An instrument evidencing or securing a secondary mortgage loan shall not contain any of the following:

(a) A power of attorney to confess judgment.

(b) A provision by which the debtor waives rights accruing under this act, any federal law, or law of this state.

(c) An assignment of or order for the payment of all or part of salary, wages, commissions, or other compensation for services earned or to be earned.

(d) A provision to compel, encourage, or induce a borrower to incorporate to evade the provisions of this act.

(e) A provision by which a debtor agrees to pay damages absent a judgment by a court.

Sec. 24. (1) A licensee or registrant shall not transfer or assign a secondary mortgage loan or a security directly representing an interest in 1 or more secondary mortgage loans before the disbursement of 75% or more of the proceeds of the secondary mortgage loan to, or for the benefit of, the borrower. This subsection shall not apply to any of the following:

- (a) A land contract not considered to be an equitable secondary mortgage.
- (b) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the proceeds for a limited period of time.
- (c) A construction loan.
- (d) A secondary mortgage 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 secondary mortgage loan.
- (2) It is a violation of this act for a licensee or registrant to do any of the following:
 - (a) Suppress or withhold from the commissioner any information that the licensee or registrant possesses that would make the licensee or registrant ineligible for licensing or registration under this act or would warrant the commissioner's denial of a license or registration application.
 - (b) Violate any provisions of 1966 PA 125, MCL 565.161 to 565.163, regulating the handling of mortgage escrow accounts by mortgagees.
 - (c) Until proper disbursement is made, fail to place in a trust or escrow account held by a depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by a broker, lender, or servicer that is the portion of a payment on a secondary mortgage loan that the person is obligated to pay to a third party. The deposits shall include amounts paid to the holder of the secondary mortgage loan, amounts for property taxes and insurance premiums, and amounts paid under an agreement that requires, if the secondary mortgage loan is not closed, the amounts paid shall be refunded to the prospective borrower, or if the secondary mortgage loan is closed, the amounts paid shall be applied to fees and costs incurred at the time the secondary 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 secondary mortgage loan application, to obtain an appraisal, or to receive a credit report.
 - (d) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or refuse or fail, within a reasonable time, to furnish any information or make a report that may be required by the commissioner under this act.
 - (e) Be convicted of a felony, or any misdemeanor of which an essential element is fraud.
 - (f) Refuse or fail to pay within a reasonable time expenses assessed under this act.
 - (g) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail 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.
 - (h) Fail to make a secondary mortgage loan pursuant to, and in accordance with, a written commitment to make a secondary 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.
 - (i) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a secondary mortgage loan application.
 - (j) Take a security interest in real property before closing the secondary mortgage loan to secure payment of fees assessed in connection with a secondary mortgage loan application.

Sec. 25. A violation of the consumer credit protection act, Public Law 90-321, 82 Stat. 146, as amended by title VI of Public Law 96-221, 94 Stat. 168 or other applicable federal law is a violation of this act.

Sec. 26. (1) A licensee or registrant shall not, willfully or knowingly, make a false, misleading, or deceptive advertisement regarding secondary mortgage loans or the availability of secondary mortgage loans.

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

Sec. 27. (1) In addition to the penalties provided by this act, a violation of this act with respect to a particular secondary mortgage loan transaction is also subject to the penalty and remedy provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(2) A person, association, nonprofit corporation, common law trust, joint stock company, limited liability company, or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or representative thereof who or which willfully or intentionally engages in this state in the business of making secondary mortgage loans without a license as required under this act, is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00, imprisonment for not more than 3 years, or both.

(3) A person who violates this act or directly or indirectly counsels, aids, or abets in a violation is liable, in addition to other penalties and forfeitures imposed by this act, for a civil fine of not more than \$1,000.00 for each offense. The civil fine shall be sued for and recovered by the commissioner and shall be collected and enforced by summary proceedings by the attorney general.

(4) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to do any of the following:

- (a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.
- (b) Enjoin a person from engaging in, or who is about to engage in, a method, act, or practice that violates this act.
- (c) Recover actual damages resulting from a violation of this act or \$250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action.

Sec. 28. The commissioner shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to administer and enforce this act.

Sec. 29. This act does not apply to a depository financial institution that is subject to other laws of this state, another state, or of the United States regulating the power of the depository financial institution to engage in secondary mortgage loan transactions or upon the conditions and limitations imposed by law upon the exercise of this power. This act does not apply to an affiliate or subsidiary of a depository financial institution or a depository financial institution holding company if the depository institution maintains an office or branch office in this state.

Sec. 30. (1) Except as otherwise provided by this act, a secondary mortgage loan may be made in compliance with this act, and only in conformance with the interest rate limitations of 1966 PA 326, MCL 438.31 to 438.33, by either of the following:

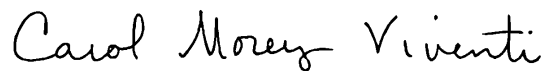
(a) A salesperson acting as an agent for a residential builder, or a residential builder, licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, when made or negotiated in connection with the sale of a residential structure constructed by that builder.

(b) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, and engaged in the sale of real estate as a principal vocation, when made or negotiated in connection with a real estate sale where the real estate broker or salesperson affiliated with the broker represents either the buyer or seller.

(2) Except as otherwise provided by this act, a secondary mortgage loan may be made in compliance with this act by a person to an employee of that person provided that the proceeds of the loan are used to assist the employee in meeting his or her housing needs.

Enacting section 1. Sections 7 and 19 of 1981 PA 125, MCL 493.57 and 493.69, are repealed.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved

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Governor.