

**SUBSTITUTE FOR
SENATE BILL NO. 778**

A bill to amend 1981 PA 125, entitled
"The secondary mortgage loan act,"
by amending sections 1, 6b, and 24 (MCL 493.51, 493.56b, and
493.74), sections 1 and 24 as amended and section 6b as added by
1997 PA 91, and by adding sections 14a, 14b, 14c, 14d, and 14e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (2) As used in this act:

4 (a) "Broker" means a person who, directly or indirectly,
5 does 1 or both of the following:

6 (i) Serves or offers to serve as an agent for a person
7 attempting to obtain a secondary mortgage loan.

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

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

2

1 (b) "Commissioner" means the commissioner of the ~~financial~~
2 ~~institutions bureau~~ OFFICE OF FINANCIAL AND INSURANCE SERVICES
3 of the department of consumer and industry services and any
4 authorized representatives of the commissioner.

5 (C) "CONTROL PERSON" MEANS A DIRECTOR OR EXECUTIVE OFFICER
6 OF A LICENSEE OR REGISTRANT OR A PERSON WHO HAS THE AUTHORITY TO
7 PARTICIPATE IN THE DIRECTION, DIRECTLY OR INDIRECTLY THROUGH 1 OR
8 MORE OTHER PERSONS, OF THE MANAGEMENT OR POLICIES OF A LICENSEE
9 OR REGISTRANT.

10 (D) ~~(c)~~ "Depository financial institution" means a state
11 or nationally chartered bank, state or federal chartered savings
12 and loan association, ~~state or federal chartered~~ savings bank,
13 or ~~state or federal chartered~~ credit union, or any other insti-
14 tution whose deposits are insured by an agency of the federal
15 government.

16 (E) ~~(d)~~ "Exclusive broker" means a person that brokers
17 secondary mortgage loans solely to 1 licensee or registrant, is
18 compensated solely by that licensee or registrant, and is indem-
19 nified by the licensee or registrant as provided in section 6.
20 The actions or practices of an exclusive broker in brokering a
21 secondary mortgage loan are the actions or practices of the
22 licensee or registrant.

23 (F) "EXECUTIVE OFFICER" MEANS AN OFFICER, MEMBER, OR PARTNER
24 OF A LICENSEE OR REGISTRANT, INCLUDING CHIEF EXECUTIVE OFFICER,
25 PRESIDENT, VICE PRESIDENT, CHIEF FINANCIAL OFFICER, CONTROLLER,
26 COMPLIANCE OFFICER, OR ANY OTHER SIMILAR POSITION.

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

3

1 (G) "FINANCIAL LICENSING ACT" MEANS THE CONSUMER FINANCIAL
2 SERVICES ACT, 1988 PA 161, MCL 487.2051 TO 487.2072, AND ANY ACT
3 LISTED IN SECTION 2 OF THE CONSUMER FINANCIAL SERVICES ACT, 1988
4 PA 161, MCL 487.2052.

5 (H) ~~(e)~~ "Lender" means a person who, directly or indirect-
6 ly, makes or offers to make secondary mortgage loans.

7 (I) ~~(f)~~ "Licensee" means a person licensed or required to
8 be licensed under this act. A licensee does not include a depos-
9 itory financial institution.

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

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

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

16 (ii) The amount of credit that may be extended to the bor-
17 rower during the term of the plan is generally made available to
18 the extent that any part of the outstanding balance is repaid.

19 (l) ~~(i)~~ "Person" means an individual, corporation, part-
20 nership, association, or other legal entity.

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

24 (N) ~~(k)~~ "Secondary mortgage loan" means a loan that is not
25 to be repaid within 90 days, that is made to a person for person-
26 al, family, or household purposes, and that is secured by a
27 mortgage upon an interest in real property used as a dwelling if

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

4

1 the property is subject to a lien of 1 or more prior mortgages.
2 The loan may be secured by other collateral in addition to real
3 property. Notwithstanding the place of execution, nominal or
4 real, of a secondary mortgage loan, if the real property that
5 secures the loan is located in this state, the secondary mortgage
6 loan is subject to this act and all other applicable laws of this
7 state.

8 (O) ~~-(t)-~~ "Service" means the collection or remittance for a
9 lender, noteowner, noteholder, or the licensee's own account of 4
10 or more installment payments of the principal, interest, or an
11 amount placed in escrow under a secondary mortgage loan, mortgage
12 servicing agreement, or an agreement with the mortgagor.

13 (P) ~~-(m)-~~ "Servicer" means a person who, directly or indi-
14 rectly, services or offers to service secondary mortgage loans.

15 Sec. 6b. (1) The commissioner shall exercise general super-
16 vision and control over brokers, lenders, and servicers doing
17 business in this state.

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

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

21 (b) Conduct examinations and investigations of any person,
22 as necessary ~~for the efficient enforcement of~~ TO ENFORCE this
23 act and the rules promulgated under this act.

24 (c) Investigate complaints filed against licensees or
25 registrants.

26 (d) Advise the attorney general or the prosecuting attorney
27 of the county in which the business is conducted that the

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

5

1 commissioner believes a licensee, registrant, or person is
2 violating this act. The attorney general or prosecuting attorney
3 shall bring a legal action to enjoin the operation of the busi-
4 ness or prosecute violations of this act.

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

10 (f) Order a person to cease and desist from a violation of
11 this act or a rule promulgated under this act ~~in accordance with~~
12 ~~the procedural requirements set forth in~~ AS PROVIDED UNDER sec-
13 tion 14.

14 (g) Suspend, revoke, or refuse to issue a license or regis-
15 tration ~~in accordance with~~ AS PROVIDED UNDER section 11.

16 (h) Assess a civil fine ~~in accordance with~~ AS PROVIDED
17 UNDER section 27.

18 (i) Appoint a conservator ~~in accordance with~~ AS PROVIDED
19 UNDER section 12a.

20 (J) ISSUE AN ORDER TO PROHIBIT A PERSON FROM BEING EMPLOYED
21 BY, AN AGENT OF, OR CONTROL PERSON OF, A LICENSEE OR REGISTRANT
22 AS PROVIDED UNDER SECTION 14A.

23 (K) ~~-(j)-~~ Censure a licensee or registrant.

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

26 (a) Issue a subpoena as ~~permitted by~~ PROVIDED UNDER
27 section 15.

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

6

1 (b) Administer oaths as ~~permitted by~~ PROVIDED UNDER
2 section 15.

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

7 (d) Have free access during regular business hours to the
8 offices, places of business, or other location where the licens-
9 ee, registrant, or an affiliate of a licensee or registrant,
10 maintains business-related documents, and to the books, accounts,
11 papers, records, files, documents, safes, and vaults of a
12 licensee or registrant. The information obtained during the
13 examination or investigation is exempt from the freedom of infor-
14 mation act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be
15 available for public inspection or copying or divulged to any
16 person except as follows:

17 (i) To the attorney general.

18 (ii) To a regulatory agency.

19 (iii) In connection with an enforcement action brought under
20 this or another applicable act.

21 (iv) To law enforcement officials.

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

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

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

7

1 SEC. 14A. (1) IF IN THE OPINION OF THE COMMISSIONER A
2 PERSON HAS ENGAGED IN FRAUD, THE COMMISSIONER MAY SERVE UPON THAT
3 PERSON A WRITTEN NOTICE OF INTENTION TO PROHIBIT THAT PERSON FROM
4 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF A LICENSEE
5 OR REGISTRANT UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A
6 FINANCIAL LICENSING ACT. FOR PURPOSES OF THIS SECTION, "FRAUD"
7 SHALL INCLUDE ACTIONABLE FRAUD, ACTUAL OR CONSTRUCTIVE FRAUD,
8 CRIMINAL FRAUD, EXTRINSIC OR INTRINSIC FRAUD, FRAUD IN THE EXECU-
9 TION, IN THE INDUCEMENT, IN FACT, OR IN LAW, OR ANY OTHER FORM OF
10 FRAUD.

11 (2) A NOTICE ISSUED UNDER SUBSECTION (1) SHALL CONTAIN A
12 STATEMENT OF THE FACTS SUPPORTING THE PROHIBITION AND, EXCEPT AS
13 PROVIDED UNDER SUBSECTION (7), SET A HEARING TO BE HELD NOT MORE
14 THAN 60 DAYS AFTER THE DATE OF THE NOTICE. IF THE PERSON DOES
15 NOT APPEAR AT THE HEARING, HE OR SHE IS CONSIDERED TO HAVE CON-
16 SENTED TO THE ISSUANCE OF AN ORDER IN ACCORDANCE WITH THE
17 NOTICE.

18 (3) IF AFTER A HEARING HELD UNDER SUBSECTION (2) THE COMMIS-
19 SIONER FINDS THAT ANY OF THE GROUNDS SPECIFIED IN THE NOTICE HAVE
20 BEEN ESTABLISHED, THE COMMISSIONER MAY ISSUE AN ORDER OF SUSPEN-
21 SION OR PROHIBITION FROM BEING A LICENSEE OR REGISTRANT OR FROM
22 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY LICENSEE
23 OR REGISTRANT UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A
24 FINANCIAL LICENSING ACT.

25 (4) AN ORDER ISSUED UNDER SUBSECTION (2) OR (3) IS EFFECTIVE
26 UPON SERVICE UPON THE PERSON. THE COMMISSIONER SHALL ALSO SERVE
27 A COPY OF THE ORDER UPON THE LICENSEE OR REGISTRANT OF WHICH THE

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

8

1 PERSON IS AN EMPLOYEE, AGENT, OR CONTROL PERSON. THE ORDER
2 REMAINS IN EFFECT UNTIL IT IS STAYED, MODIFIED, TERMINATED, OR
3 SET ASIDE BY THE COMMISSIONER OR A REVIEWING COURT.

4 (5) AFTER 5 YEARS FROM THE DATE OF AN ORDER ISSUED UNDER
5 SUBSECTION (2) OR (3), THE PERSON SUBJECT TO THE ORDER MAY APPLY
6 TO THE COMMISSIONER TO TERMINATE THE ORDER.

7 (6) IF THE COMMISSIONER CONSIDERS THAT A PERSON SERVED A
8 NOTICE UNDER SUBSECTION (1) POSES AN IMMINENT THREAT OF FINANCIAL
9 LOSS TO APPLICANTS FOR SECONDARY MORTGAGE LOANS, THE COMMISSIONER
10 MAY SERVE UPON THE PERSON AN ORDER OF SUSPENSION FROM BEING
11 EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY LICENSEE OR
12 REGISTRANT. THE SUSPENSION IS EFFECTIVE ON THE DATE THE ORDER IS
13 ISSUED AND, UNLESS STAYED BY A COURT, REMAINS IN EFFECT PENDING
14 THE COMPLETION OF A REVIEW AS PROVIDED UNDER THIS SECTION AND THE
15 COMMISSIONER HAS DISMISSED THE CHARGES SPECIFIED IN THE ORDER.

16 (7) UNLESS OTHERWISE AGREED TO BY THE COMMISSIONER AND THE
17 PERSON SERVED WITH AN ORDER ISSUED UNDER SUBSECTION (6), THE
18 HEARING REQUIRED UNDER SUBSECTION (2) TO REVIEW THE SUSPENSION
19 SHALL BE HELD NOT EARLIER THAN 5 DAYS OR LATER THAN 20 DAYS AFTER
20 THE DATE OF THE NOTICE.

21 (8) IF A PERSON IS CONVICTED OF A FELONY INVOLVING FRAUD,
22 DISHONESTY, OR BREACH OF TRUST, THE COMMISSIONER MAY ISSUE AN
23 ORDER SUSPENDING OR PROHIBITING THAT PERSON FROM BEING A LICENSEE
24 OR REGISTRANT AND FROM BEING EMPLOYED BY, AN AGENT OF, OR CONTROL
25 PERSON OF ANY LICENSEE OR REGISTRANT UNDER THIS ACT OR A LICENSEE
26 OR REGISTRANT UNDER A FINANCIAL LICENSING ACT. AFTER 5 YEARS

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

9

1 FROM THE DATE OF THE ORDER, THE PERSON SUBJECT TO THE ORDER MAY
2 APPLY TO THE COMMISSIONER TO TERMINATE THE ORDER.

3 (9) THE COMMISSIONER SHALL MAIL A COPY OF ANY NOTICE OR
4 ORDER ISSUED UNDER THIS SECTION TO THE LICENSEE OR REGISTRANT OF
5 WHICH THE PERSON SUBJECT TO THE NOTICE OR ORDER IS AN EMPLOYEE,
6 AGENT, OR CONTROL PERSON.

7 SEC. 14B. (1) A HEARING UNDER SECTION 14 OR 14A SHALL BE
8 CONDUCTED UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969
9 PA 306, MCL 24.201 TO 24.328. WITHIN 30 DAYS AFTER THE COMMIS-
10 SIONER HAS NOTIFIED THE PARTIES THAT THE CASE HAS BEEN SUBMITTED
11 TO HIM OR HER FOR FINAL DECISION, THE COMMISSIONER SHALL RENDER A
12 DECISION THAT SHALL INCLUDE FINDINGS OF FACT SUPPORTING THE DECI-
13 SION AND SERVE UPON EACH PARTY TO THE PROCEEDING A COPY OF THE
14 DECISION AND AN ORDER CONSISTENT WITH THE DECISION.

15 (2) EXCEPT FOR A CONSENT ORDER, A PARTY TO THE PROCEEDING,
16 OR A PERSON AFFECTED BY AN ORDER ISSUED UNDER SECTION 14 OR 14A
17 MAY OBTAIN A JUDICIAL REVIEW OF THE ORDER. A CONSENT ORDER MAY
18 BE REVIEWED AS PROVIDED UNDER THE ADMINISTRATIVE PROCEDURES ACT
19 OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. EXCEPT FOR AN ORDER
20 UNDER JUDICIAL REVIEW, THE COMMISSIONER MAY TERMINATE OR SET
21 ASIDE ANY ORDER. THE COMMISSIONER MAY TERMINATE OR SET ASIDE AN
22 ORDER UNDER JUDICIAL REVIEW WITH THE PERMISSION OF THE COURT.

23 (3) UNLESS ORDERED BY THE COURT, THE COMMENCEMENT OF PRO-
24 CEEDINGS FOR JUDICIAL REVIEW UNDER SUBSECTION (2) DOES NOT STAY
25 THE COMMISSIONER'S ORDER.

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

10

1 SEC. 14C. THE COMMISSIONER MAY APPLY TO THE CIRCUIT COURT
2 OF INGHAM COUNTY FOR THE ENFORCEMENT OF ANY OUTSTANDING ORDER
3 ISSUED UNDER SECTION 8, 14, OR 14A.

4 SEC. 14D. ANY CURRENT OR FORMER EXECUTIVE OFFICER, DIREC-
5 TOR, AGENT, OR CONTROL PERSON WHO VIOLATES A FINAL ORDER ISSUED
6 UNDER SECTION 14A IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE
7 OF NOT MORE THAN \$5,000.00 OR IMPRISONMENT FOR NOT MORE THAN 1
8 YEAR, OR BOTH.

9 SEC. 14E. A CONTROL PERSON WHO IS SUBJECT TO AN ORDER
10 ISSUED UNDER SECTION 14A AND WHO MEETS ALL OF THE FOLLOWING
11 REQUIREMENTS IS NOT IN VIOLATION OF THE ORDER:

12 (A) THE CONTROL PERSON SHALL NOT IN ANY MANNER, DIRECTLY OR
13 INDIRECTLY, PARTICIPATE IN THE CONTROL OF A LICENSEE OR REGIS-
14 TRANT AFTER THE DATE THE ORDER IS ISSUED.

15 (B) THE CONTROL PERSON SHALL WITHIN 6 MONTHS AFTER THE DATE
16 THE ORDER IS FINAL TRANSFER ANY INTEREST THE CONTROL PERSON OWNS
17 IN A LICENSEE OR REGISTRANT TO AN UNRELATED THIRD PARTY.

18 Sec. 24. (1) A licensee or registrant shall not transfer or
19 assign a secondary mortgage loan or a security directly repre-
20 senting an interest in 1 or more secondary mortgage loans before
21 the disbursement of 75% or more of the proceeds of the secondary
22 mortgage loan to, or for the benefit of, the borrower. This sub-
23 section shall not apply to any of the following:

24 (a) A land contract not considered to be an equitable sec-
25 ondary mortgage.

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

11

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

4 (c) A construction loan.

5 (d) A secondary mortgage loan that provides in writing that
6 the loan proceeds shall be disbursed to or for the benefit of the
7 borrower in installments or upon the request of the borrower or
8 upon the completion of renovations or repairs to the dwelling
9 situated on the real property subject to the secondary mortgage
10 loan.

11 (2) It is a violation of this act for a licensee or regis-
12 trant to do any of the following:

13 (a) Suppress or withhold from the commissioner any informa-
14 tion that the licensee or registrant possesses that would make
15 the licensee or registrant ineligible for licensing or registra-
16 tion under this act or would warrant the commissioner's denial of
17 a license or registration application.

18 (b) Violate any provisions of 1966 PA 125, MCL 565.161 to
19 ~~565.163~~ 565.164, regulating the handling of mortgage escrow
20 accounts by mortgagees.

21 (c) Until proper disbursement is made, fail to place in a
22 trust or escrow account held by a depository financial institu-
23 tion in a manner approved by the commissioner any money, funds,
24 deposits, checks, drafts, or other negotiable instruments
25 received by a broker, lender, or servicer that is the portion of
26 a payment on a secondary mortgage loan that the person is
27 obligated to pay to a third party. The deposits shall include

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

12

1 amounts paid to the holder of the secondary mortgage loan,
2 amounts for property taxes and insurance premiums, and amounts
3 paid under an agreement that requires, if the secondary mortgage
4 loan is not closed, the amounts paid shall be refunded to the
5 prospective borrower, or if the secondary mortgage loan is
6 closed, the amounts paid shall be applied to fees and costs
7 incurred at the time the secondary mortgage loan is closed. Fees
8 and costs include, but are not limited to, title insurance premi-
9 ums and recording fees. Fees and costs do not include amounts
10 paid to cover costs incurred to process the secondary mortgage
11 loan application, to obtain an appraisal, or to receive a credit
12 report.

13 (d) Refuse to permit an examination or investigation by the
14 commissioner of the books and affairs of the licensee or regis-
15 trant, or refuse or fail, within a reasonable time, to furnish
16 any information or make a report that may be required by the com-
17 missioner under this act.

18 (e) Be convicted of a felony, or any misdemeanor of which an
19 essential element is fraud.

20 (f) Refuse or fail to pay within a reasonable time expenses
21 assessed under this act.

22 (g) Fail to make restitution after having been ordered to do
23 so by the commissioner or an administrative agency, or fail to
24 make restitution or pay damages to persons injured by the
25 licensee's or registrant's business transactions after having
26 been ordered to do so by a court.

SB 778, As Passed Senate, November 1, 2001

Senate Bill No. 778

13

1 (h) Fail to make a secondary mortgage loan pursuant to, and
2 in accordance with, a written commitment to make a secondary
3 mortgage loan issued to, and accepted by, a person when the
4 person has timely and completely satisfied all the conditions of
5 the commitment prior to the expiration of the commitment.

6 (i) Require a prospective borrower to deal exclusively with
7 the licensee or registrant in regard to a secondary mortgage loan
8 application.

9 (j) Take a security interest in real property before closing
10 the secondary mortgage loan to secure payment of fees assessed in
11 connection with a secondary mortgage loan application.

12 (K) EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 14E, KNOW-
13 INGLY PERMIT A PERSON TO VIOLATE AN ORDER THAT HAS BEEN ISSUED
14 UNDER THIS ACT OR ANY OTHER FINANCIAL LICENSING ACT THAT PROHIB-
15 ITS THAT PERSON FROM BEING EMPLOYED BY, AN AGENT OF, OR A CONTROL
16 PERSON OF THE LICENSEE OR REGISTRANT.