

HOUSE BILL No. 5324

October 18, 2005, Introduced by Reps. Huizenga, Lemmons, III, McConico and Tobocman
and referred to the Committee on Banking and Financial Services.

A bill to amend 1988 PA 161, entitled
"Consumer financial services act,"
by amending sections 2, 5, 6, and 10g (MCL 487.2052, 487.2055,
487.2056, and 487.2060g), section 2 as amended and section 10g as
added by 2002 PA 390 and sections 5 and 6 as amended by 1999 PA
275.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Applicant" means a person that has applied to the
3 commissioner to be licensed under this act.

4 (b) "Bureau" means the office of financial and insurance
5 services of the department of ~~consumer and industry services~~

6 LABOR AND ECONOMIC GROWTH.

1 (c) "Business activity" means any activity regulated by any of
2 the financial licensing acts. ~~identified under subdivision (d).~~

3 (d) "Class I license" means a license issued under this act
4 that authorizes the licensee to engage in all of the activities
5 permitted under ~~the regulatory loan act of 1963, 1939 PA 21, MCL~~
6 ~~493.1 to 493.25, the secondary mortgage loan act, 1981 PA 125, MCL~~
7 ~~493.51 to 493.81, the motor vehicle sales finance act, 1950 (Ex~~
8 ~~Sess) PA 27, MCL 492.101 to 492.141, 1984 PA 379, MCL 493.101 to~~
9 ~~493.114, the sale of checks act, 1960 PA 136, MCL 487.901 to~~
10 ~~487.916, or the mortgage brokers, lenders, and servicers licensing~~
11 ~~act, 1987 PA 173, MCL 445.1651 to 445.1684~~ **ANY OF THE FINANCIAL**
12 **LICENSING ACTS.**

13 (e) "Class II license" means a license issued under this act
14 that authorizes all of the activities permitted under a class I
15 license except for activities permitted under the sale of checks
16 act, 1960 PA 136, MCL 487.901 to 487.916, loan servicing activities
17 under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to
18 493.81, or the mortgage brokers, lenders, and servicers licensing
19 act, 1987 PA 173, MCL 445.1651 to 445.1684.

20 (f) "Commissioner" means the commissioner of the office of
21 financial and insurance services or an authorized representative of
22 the commissioner.

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

27 (h) "Depository financial institution" means a bank, savings

1 and loan association, savings bank, or credit union organized under
2 the laws of this state, another state, the District of Columbia,
3 the United States, or a territory or protectorate of the United
4 States, whose deposits are insured by an agency of the federal
5 government.

6 (i) "Executive officer" means an officer, member, or partner
7 of a licensee, including chief executive officer, president, vice
8 president, chief financial officer, controller, compliance officer,
9 or any other similar position.

10 (j) "Financial licensing acts" means ~~the acts listed in~~
11 ~~subdivision (d)~~ **THIS ACT; THE REGULATORY LOAN ACT, 1939 PA 21, MCL**
12 **493.1 TO 493.24; THE SECONDARY MORTGAGE LOAN ACT, 1981 PA 125, MCL**
13 **493.51 TO 493.81; THE MOTOR VEHICLE SALES FINANCE ACT, 1950 (EX**
14 **SESS) PA 27, MCL 492.101 TO 492.141; 1984 PA 379, MCL 493.101 TO**
15 **493.114; THE SALE OF CHECKS ACT, 1960 PA 136, MCL 487.901 TO**
16 **487.916; THE MONEY TRANSMISSION SERVICES ACT, MCL 487.1001 TO**
17 **487.1048; AND THE MORTGAGE BROKERS, LENDERS, AND SERVICERS**
18 **LICENSING ACT, 1987 PA 173, MCL 445.1651 TO 445.1684.**

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

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

1 493.51 to 493.81, or an agreement with the mortgagor.

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

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

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

8 (b) An application fee as provided ~~by~~ **IN** section 11. The
9 application fee is not refundable.

10 (c) Financial statements, reasonably satisfactory to the
11 commissioner, showing that the applicant's net worth exceeds
12 \$100,000.00 for ~~applicants~~ **AN APPLICANT** for a class I license; ~~—~~
13 \$50,000.00 for ~~applicants~~ **AN APPLICANT** for a class II license; ~~—~~
14 ~~and~~ \$1,000,000.00 for ~~applicants~~ **AN APPLICANT** that ~~intend~~
15 **INTENDS** to engage in business activity governed by 1984 PA 379, MCL
16 493.101 to 493.114; **OR \$100,000.00 PLUS AN ADDITIONAL \$25,000.00**
17 **FOR EACH LOCATION OR AUTHORIZED DELEGATE, AS APPLICABLE, OR**
18 **\$1,000,000.00, WHICHEVER IS LESS, FOR AN APPLICANT THAT INTENDS TO**
19 **PROVIDE MONEY TRANSMISSION SERVICES AS DEFINED IN SECTION 2 OF THE**
20 **MONEY TRANSMISSION SERVICES ACT.** A licensee shall have and continue
21 to maintain the required net worth while engaging in the business
22 activities authorized for licensing under this act. The
23 commissioner may by order establish a higher net worth requirement
24 for new class I licensees to assure safe and sound operation of the
25 activities.

26 (2) Net worth under subsection (1)(c) shall be determined at
27 the conclusion of the fiscal year of the licensee immediately

1 preceding the date an application for a license is submitted to the
2 commissioner or, for corporations not in existence as of the
3 previous year end, the immediately preceding month end. Net worth
4 shall be disclosed on a form prescribed by the commissioner or on a
5 form prepared or reviewed by a certified public accountant and
6 shall be computed in accordance with generally accepted accounting
7 principles. The following assets shall be excluded in the
8 computation of net worth:

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

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

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

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

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

25 (f) Organization costs.

26 Sec. 6. (1) An applicant for a license shall ~~file~~ **FURNISH** a
27 surety bond or letter of credit ~~in an amount not less than~~ **TO**

1 SECURE ITS OBLIGATIONS UNDER THIS ACT TO THE COMMISSIONER. EXCEPT
 2 AS PROVIDED IN THIS SUBSECTION, THE PRINCIPAL AMOUNT OF A SURETY
 3 BOND OR LETTER OF CREDIT SHALL BE AT LEAST \$500,000.00. IF THE
 4 APPLICANT INTENDS TO PROVIDE MONEY TRANSMISSION SERVICES AS DEFINED
 5 IN SECTION 2 OF THE MONEY TRANSMISSION SERVICES ACT, THE APPLICANT
 6 SHALL FILE A SURETY BOND THAT IS IN A PRINCIPAL AMOUNT AS
 7 DETERMINED UNDER SECTION 13(5)(B) OF THE MONEY TRANSMISSION
 8 SERVICES ACT FOR A LICENSEE UNDER THAT ACT.

9 (2) ~~The~~ A surety bond DESCRIBED IN SUBSECTION (1) shall ~~run~~
 10 BE PAYABLE to the commissioner for the benefit of the people of the
 11 state of Michigan for the use of, and may be sued on by, the state.
 12 ~~The~~ A surety bond or letter of credit shall remain for the
 13 duration of the licensure period.

14 (3) ~~The~~ A surety bond or letter of credit required under
 15 ~~this section~~ SUBSECTION (1) shall be in a form satisfactory to the
 16 commissioner and payable upon demand by the commissioner if he or
 17 she determines that the licensee is not conducting its activities
 18 as required by this act and all of the rules promulgated under this
 19 act, and has failed to pay all money that becomes due to a person
 20 who is an installment buyer under the motor vehicle sales finance
 21 act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, Michigan
 22 residents who purchase checks under the sale of checks act, 1960 PA
 23 136, MCL 487.901 to 487.916, MICHIGAN RESIDENTS WHO PURCHASE MONEY
 24 TRANSMISSION SERVICES AS DEFINED IN SECTION 2 OF THE MONEY
 25 TRANSMISSION SERVICES ACT, loan applicants, loan servicing
 26 customers, and borrowers under the secondary mortgage loan act,
 27 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers,

1 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to
2 445.1684, and the commissioner.

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

7 (5) Claims described in subsection (4) may only be filed
8 against a licensee's bond or letter of credit by the commissioner
9 on behalf of the bureau and of individuals having claims and who
10 are, as applicable, the licensee's loan applicants, loan servicing
11 customers, and borrowers under the secondary mortgage loan act,
12 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers,
13 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to
14 445.1684, Michigan residents who purchase checks under the sale of
15 checks act, 1960 PA 136, MCL 487.901 to 487.916, **MICHIGAN RESIDENTS**
16 **WHO PURCHASE MONEY TRANSMISSION SERVICES AS DEFINED IN SECTION 2 OF**
17 **THE MONEY TRANSMISSION SERVICES ACT**, or persons who are installment
18 buyers under the motor vehicle sales finance act, 1950 (Ex Sess) PA
19 27, MCL 492.101 to 492.141.

20 (6) Claims filed with the commissioner against a bond or
21 letter of credit by a loan applicant, loan servicing customer, or
22 borrower under the secondary mortgage loan act, 1981 PA 125, MCL
23 493.51 to 493.81, or the mortgage brokers, lenders, and servicers
24 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, shall
25 involve, as applicable, only a mortgage loan, mortgage loan
26 application, secondary mortgage loan, or secondary mortgage loan
27 application secured or to be secured by real property used as a

1 dwelling located in this state. The amount of the claim shall not
2 exceed actual fees paid by the claimant to the licensee in
3 connection with a loan application, overcharges of principal and
4 interest, and excess escrow collections by the licensee.

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

14 Sec. 10g. (1) If in the opinion of the commissioner a person
15 has engaged in fraud **OR MONEY LAUNDERING**, the commissioner may
16 serve upon that person a written notice of intention to prohibit
17 that person from being employed by, an agent of, or control person
18 of a licensee under this act or a licensee or registrant under a
19 financial licensing act. ~~For purposes of this section, "fraud"~~
20 ~~shall include actionable fraud, actual or constructive fraud,~~
21 ~~criminal fraud, extrinsic or intrinsic fraud, fraud in the~~
22 ~~execution, in the inducement, in fact, or in law, or any other form~~
23 ~~of fraud.~~

24 (2) A notice issued under subsection (1) shall contain a
25 statement of the facts supporting the prohibition and, except as
26 provided under subsection (7), set a hearing to be held not more
27 than 60 days after the date of the notice. If the person does not

1 appear at the hearing, he or she is considered to have consented to
2 the issuance of an order in accordance with the notice.

3 (3) If after a hearing held under subsection (2) the
4 commissioner finds that any of the grounds specified in the notice
5 have been established, the commissioner may issue an order of
6 suspension or prohibition from being a licensee or registrant or
7 from being employed by, an agent of, or control person of any
8 licensee under this act or a licensee or registrant under a
9 financial licensing act.

10 (4) An order issued under subsection (2) or (3) is effective
11 upon service upon the person. The commissioner shall also serve a
12 copy of the order upon the licensee of which the person is an
13 employee, agent, or control person. The order remains in effect
14 until it is stayed, modified, terminated, or set aside by the
15 commissioner or a reviewing court.

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

19 (6) If the commissioner considers that a person served a
20 notice under subsection (1) poses an imminent threat of financial
21 loss to applicants for loans, mortgage loans, secondary mortgage
22 loans, credit card arrangements, or installment sales credit,
23 borrowers on loans, obligors on installment sale contracts, loan
24 servicing customers, purchasers of mortgage loans or interests in
25 mortgage loans, or purchasers of ~~checks from a licensee~~ **MONEY**
26 **TRANSMISSION SERVICES AS DEFINED IN SECTION 2 OF THE MONEY**
27 **TRANSMISSION SERVICES ACT**, the commissioner may serve upon the

1 person an order of suspension from being employed by, an agent of,
2 or control person of any licensee. The suspension is effective on
3 the date the order is issued and, unless stayed by a court, remains
4 in effect pending the completion of a review as provided under this
5 section and the commissioner has dismissed the charges specified in
6 the order.

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

12 (8) If a person is convicted of a ~~felony~~ **CRIME** involving
13 fraud, dishonesty, **MONEY LAUNDERING**, or breach of trust, the
14 commissioner may issue an order suspending or prohibiting that
15 person from being a licensee and from being employed by, an agent
16 of, or control person of any licensee under this act or a licensee
17 or registrant under a financial licensing act. After 5 years from
18 the date of the order, the person subject to the order may apply to
19 the commissioner to terminate the order.

20 (9) The commissioner shall mail a copy of any notice or order
21 issued under this section to the licensee of which the person
22 subject to the notice or order is an employee, agent, or control
23 person.

24 (10) AS USED IN THIS SECTION:

25 (A) "FRAUD" INCLUDES ACTIONABLE FRAUD, ACTUAL OR CONSTRUCTIVE
26 FRAUD, CRIMINAL FRAUD, EXTRINSIC OR INTRINSIC FRAUD, FRAUD IN THE
27 EXECUTION, IN THE INDUCEMENT, IN FACT, OR IN LAW, OR ANY OTHER FORM

1 OF FRAUD.

2 (B) "MONEY LAUNDERING" MEANS CONDUCT BY 1 OR MORE PERSONS THAT
3 CONCEALS THE EXISTENCE, ILLEGAL SOURCE, OR ILLEGAL APPLICATION OF
4 INCOME AND THEN DISGUISES THAT INCOME TO MAKE IT APPEAR LEGITIMATE.
5 MONEY LAUNDERING INCLUDES, BUT IS NOT LIMITED TO, CONDUCT THAT
6 VIOLATES ANY STATE OR FEDERAL LAW THAT IMPOSES A CRIMINAL PENALTY
7 FOR MONEY LAUNDERING.

8 Enacting section 1. This amendatory act does not take effect
9 unless Senate Bill No.____ or House Bill No. 5328(request no.
10 03434'05) of the 93rd Legislature is enacted into law.