

**SUBSTITUTE FOR
HOUSE BILL NO. 5020**

A bill to amend 1987 PA 173, entitled
"Mortgage brokers, lenders, and servicers licensing act,"
by amending sections 1a and 29 (MCL 445.1651a and 445.1679),
section 1a as amended by 2008 PA 66 and section 29 as amended by
2008 PA 71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1a. As used in this act:

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

6 (b) "Board" means the mortgage industry advisory board created
7 in section 33.

1 (c) "Commissioner" means the commissioner of the office of
2 financial and insurance services of the department of labor and
3 economic growth or his or her authorized agent.

4 (d) "Construction loan" means a mortgage loan to construct a
5 1-to-4 family dwelling, that is approved and closed before
6 completion of the construction of the improvement on the real
7 property.

8 (e) "Control person" means a director or executive officer of
9 a licensee or registrant or a person who has the authority to
10 participate in the direction, directly or indirectly through 1 or
11 more other persons, of the management or policies of a licensee or
12 registrant.

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

17 (g) "Executive officer" means an officer, member, or partner
18 of a licensee or registrant. The term includes the chief executive
19 officer, president, vice president, chief financial officer,
20 controller, or compliance officer or an individual holding any
21 other similar position.

22 (h) "Financial licensing act" means the consumer financial
23 services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the
24 acts listed in section 2 of the consumer financial services act,
25 1988 PA 161, MCL 487.2052.

26 (i) "Firm commitment" means an underwriting in which a broker-
27 dealer commits to buy the mortgage loan or the entire issue of

1 securities based upon or backed by 1 or more mortgage loans and
2 assumes all financial responsibility for any unsold securities.

3 (j) "Individual investor" means a person that resides in this
4 state or has its principal place of business in this state. The
5 term does not include a bank, savings bank, savings and loan
6 association, credit union, trust company, insurance company,
7 investment company as defined in the investment company act of
8 1940, 15 USC 80a-1 to 80a-64, pension or profit sharing plan if the
9 assets of the plan are managed by a bank or trust company or other
10 institutional manager, financial institution, institutional
11 manager, broker-dealer that is a member of the New York stock
12 exchange or registered under the uniform securities act, 1964 PA
13 265, MCL 451.501 to 451.818, **OR THE UNIFORM SECURITIES ACT (2002),**
14 **MCL 451.2101 TO 451.2703**, the federal national mortgage
15 association, the government national mortgage association, the
16 federal home loan mortgage corporation, or a mortgage lender or
17 mortgage servicer.

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

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

21 (m) "Loan officer" means an individual who is an employee or
22 agent of a mortgage broker, mortgage lender, or mortgage servicer;
23 who originates mortgage loans; and who is not an employee or agent
24 of a depository financial institution or a subsidiary or affiliate
25 of a depository financial institution.

26 (n) "Loan officer registrant" means an individual who is
27 currently registered under section 2a.

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

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

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

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

9 (q) "Mortgage loan" means a loan secured by a first mortgage
10 on real property located in this state and used, or improved for
11 use, as a dwelling and designed for occupancy by 4 or fewer
12 families or a land contract covering real property located in this
13 state used, or improved for use, as a dwelling and designed for
14 occupancy by 4 or fewer families. A mortgage loan does not include
15 a home improvement installment contract under the home improvement
16 finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

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

19 (s) "Originate" means any of the following:

20 (i) To negotiate, arrange, or offer to negotiate or arrange a
21 mortgage loan between a mortgage lender and 1 or more individuals.

22 (ii) To place, assist in placing, or find a mortgage loan for 1
23 or more individuals.

24 (t) "Person" means an individual, corporation, limited
25 liability company, partnership, association, governmental entity,
26 or any other legal entity.

27 (u) "Real estate broker" means a broker or associate broker

1 licensed under article 25 of the occupational code, 1980 PA 299,
2 MCL 339.2501 to 339.2518.

3 (v) "Real estate salesperson" means a salesperson licensed
4 under article 25 of the occupational code, 1980 PA 299, MCL
5 339.2501 to 339.2518.

6 (w) "Register" means filing a notice with the commissioner on
7 a form prescribed by the commissioner that notifies the
8 commissioner of the intent to engage in the activities of a
9 mortgage broker, mortgage lender, mortgage servicer, or loan
10 officer in this state and the payment of any fees required under
11 this act, along with the other documents, proofs, and fees required
12 by the commissioner.

13 (x) "Registrant" means a person that is registered under
14 section 6 or required to register under section 6. The term does
15 not include a loan officer registrant.

16 (y) "Service" means the collection or remittance, or the right
17 or obligation to collect or remit, for a lender, noteowner,
18 noteholder, mortgage servicer, or the licensee's or registrant's
19 own account of 4 or more installment payments of the principal,
20 interest, or an amount placed in escrow under a mortgage loan,
21 mortgage servicing agreement, or an agreement with the mortgagor.

22 Sec. 29. (1) An owner, partner, member, officer, director,
23 trustee, employee, agent, broker, or other person, or a
24 representative acting on the authority of that person that
25 willfully or intentionally does any of the following is guilty of a
26 misdemeanor punishable by a fine of not more than \$15,000.00 or
27 imprisonment for not more than 1 year, or both:

1 (a) Engages in this state in the business of a mortgage
2 broker, mortgage lender, or mortgage servicer without a license or
3 registration required under this act or acts as a loan officer in
4 this state without a loan officer registration required under this
5 act.

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

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

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

15 (iii) A construction loan.

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

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

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

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

1 (A) The broker-dealer is registered under the uniform
2 securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE UNIFORM**
3 **SECURITIES ACT (2002), MCL 451.2101 TO 451.2703.**

4 (B) The broker-dealer is not an affiliate of the mortgage
5 lender unless the person acquired the broker-dealer registration,
6 directly or indirectly, before September 1, 1987 under the uniform
7 securities act, 1964 PA 265, MCL 451.501 to 451.818, was affiliated
8 with a mortgage lender before September 1, 1987, and has
9 continuously maintained that registration subsequent to September
10 1, 1987. For purposes of this subparagraph, if an aggregate of more
11 than 10% of the outstanding voting stock or interest in a
12 corporation, unincorporated organization, partnership, or other
13 legal entity that is a broker-dealer or mortgage lender is sold,
14 transferred, assigned, or otherwise conveyed subsequent to
15 September 1, 1987, the registration shall be considered to not have
16 been continuously maintained.

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

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

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

26 (B) An individual who, after the purchase, has an investment
27 of more than \$50,000.00 in such loans or securities, including

1 installment payments to be made within 1 year after purchase by the
2 individual, has either personal income before taxes in excess of
3 \$100,000.00 for his or her last fiscal year or latest 12-month
4 period and is capable of bearing the economic risk, or net worth in
5 excess of \$1,000,000.00, and has the knowledge and experience in
6 financial and business matters that he or she is capable of
7 evaluating the merits and risks of the prospective investment, or
8 has obtained the advice of an attorney, certified public
9 accountant, or investment adviser registered under the investment
10 advisers act of 1940, or an investment adviser registered under the
11 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE**
12 **UNIFORM SECURITIES ACT (2002), MCL 451.2101 TO 451.2703**, with
13 respect to the merits and risks of the prospective investment.

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

18 (2) Subject to subsections (4) and (5), if the commissioner
19 finds that a licensee, registrant, or loan officer registrant has
20 violated this act or the rules promulgated under this act, the
21 commissioner may do 1 or more of the following:

22 (a) Assess a civil fine against the licensee, registrant, or
23 loan officer registrant or a person who controls the licensee,
24 registrant, or loan officer registrant of not more than \$1,000.00
25 for each violation, except that the licensee, registrant, or loan
26 officer registrant or the person shall not be fined more than
27 \$10,000.00 for a transaction resulting in more than 1 violation,

1 plus the costs of investigation.

2 (b) Suspend or revoke a license, registration, or loan officer
3 registration or refuse to issue a license or renew a license,
4 registration, or loan officer registration.

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

11 (3) A civil fine assessed under subsection (2) may be sued for
12 and recovered by and in the name of the commissioner and may be
13 collected and enforced by summary proceedings by the attorney
14 general. Each individual injured by a violation of this act or a
15 rule shall constitute a separate violation. In determining under
16 subsection (2) the amount of a fine, whether to suspend or revoke a
17 license, registration, or loan officer registration, whether to
18 refuse to issue or renew a license or loan officer registration, or
19 the amount of restitution, the commissioner shall consider the
20 extent to which the violation was a knowing and willful violation,
21 the extent of the injury suffered because of the violation, the
22 corrective action taken by the licensee, registrant, or loan
23 officer registrant to ensure that the violation will not be
24 repeated, and the record of the licensee, registrant, or loan
25 officer registrant in complying with this act. Any proceedings
26 under this subsection are subject to the procedures of the
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328.

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

6 (5) If a loan officer registrant violates section 22b(e) (ii) ,
7 the commissioner shall revoke his or her loan officer registration.
8 Revocation of a loan officer registration under this subsection
9 does not affect the commissioner's authority to pursue any other
10 remedy available under subsection (2) for that violation.

11 Enacting section 1. This amendatory act does not take effect
12 unless House Bill No. 5008 of the 94th Legislature is enacted into
13 law.