HOUSE SUBSTITUTE FOR

SENATE BILL NO. 356

A bill to amend 1987 PA 173, entitled

"Mortgage brokers, lenders, and servicers licensing act,"

by amending section 29 (MCL 445.1679), as amended by 2008 PA 71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

(*iii*) A construction loan.

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

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

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

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

(A) The broker-dealer is registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

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

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

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

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

(B) An individual who, after the purchase, has an investment of more than $50,000.00 in ~~such~~ **MORTGAGE** loans or securities **REPRESENTING AN INTEREST IN 1 OR MORE MORTGAGE LOANS**, including installment payments to be made within 1 year after purchase by the individual, has either personal income before taxes in excess of $100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of $1,000,000.00, and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment, or has obtained the advice of an attorney, certified public accountant, or investment adviser registered under the investment advisers act of 1940, or an investment adviser registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, with respect to the merits and risks of the prospective investment.

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

(D) COERCES OR INDUCES A REAL ESTATE APPRAISER TO INFLATE THE VALUE OF REAL PROPERTY USED AS COLLATERAL FOR A MORTGAGE LOAN, INCLUDING, BUT NOT LIMITED TO, BY DOING ANY OF THE FOLLOWING:

(*i*) REPRESENTING OR IMPLYING THAT A REAL ESTATE APPRAISER WILL NOT BE SELECTED TO CONDUCT AN APPRAISAL OF THE REAL PROPERTY OR SELECTED FOR FUTURE APPRAISAL WORK UNLESS THE APPRAISER AGREES IN ADVANCE TO A VALUE, RANGE OF VALUES, OR MINIMUM VALUE FOR THE REAL PROPERTY.

(*ii*) REPRESENTING OR IMPLYING THAT A REAL ESTATE APPRAISER WILL NOT BE PAID FOR AN APPRAISAL UNLESS THE APPRAISER AGREES IN ADVANCE TO A VALUE, RANGE OF VALUES, OR MINIMUM VALUE FOR THE REAL PROPERTY.

(2) Subject to subsections (4) and (5), if the commissioner finds that a licensee, registrant, or loan officer registrant has

violated**, OR DIRECTLY OR INDIRECTLY COUNSELED, AIDED, OR ABETTED IN A VIOLATION, OF** this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee, registrant, or loan officer registrant or a person who controls the licensee, registrant, or loan officer registrant of not more than ~~$1,000.00~~ **$3,000.00** for each violation, except that the licensee, registrant, or loan officer registrant or the person shall not be fined more than ~~$10,000.00~~ **$30,000.00** for a transaction resulting in more than 1 violation, plus the costs of investigation.

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

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

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule ~~shall constitute~~ **IS** a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license, registration, or loan officer registration, whether to refuse to issue or renew a license or loan officer registration, or

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the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee, registrant, or loan officer registrant to ensure that the violation will not be repeated, and the record of the licensee, registrant, or loan officer registrant in complying with this act. Any proceedings under this subsection are subject to the procedures of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

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

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 343.

(b) House Bill No. 4054.

[(c) House Bill No. 6148.]