

HOUSE BILL No. 5020

July 10, 2007, Introduced by Rep. Johnson and referred to the Committee on Commerce.

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 2002 PA 391 and section 29 as amended by
1996 PA 210.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1a. As used in this act, unless the context requires
2 otherwise:

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

7 (b) "Commissioner" means the commissioner of the office of

1 financial and insurance services of the department of consumer and
2 industry services or his or her authorized agent.

3 (c) "Construction loan" means a mortgage loan for the purpose
4 of constructing a 1-to-4 family dwelling, which loan is approved
5 and closed before completion of the construction of the improvement
6 on the real property.

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

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

15 (f) "Executive officer" means an officer, member, or partner
16 of a licensee or registrant, including chief executive officer,
17 president, vice president, chief financial officer, controller,
18 compliance officer, or any other similar position.

19 (g) "Financial licensing act" means the consumer financial
20 services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the
21 acts listed in section 2 of the consumer financial services act,
22 1988 PA 161, MCL 487.2052.

23 (h) "Firm commitment" means an underwriting in which a broker-
24 dealer commits to buy the mortgage loan or the entire issue of
25 securities based upon or backed by 1 or more mortgage loans and
26 assumes all financial responsibility for any unsold securities.

27 (i) "Individual investor" means a person residing in this

1 state or having its principal place of business in this state,
2 other than a bank, savings bank, savings and loan association,
3 credit union, trust company, insurance company, investment company
4 as defined in the investment company act of 1940, ~~title I of~~
5 ~~chapter 686, 54 Stat. 789, 15 U.S.C. USC 80a-1 to 80a-3 and 80a-4~~
6 ~~to 80a-64~~, pension or profit sharing plan, the assets of which are
7 managed by a bank or trust company or other institutional manager,
8 financial institution, institutional manager, broker-dealer that is
9 a member of the New York stock exchange or registered under the
10 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE**
11 **UNIFORM SECURITIES ACT (2002), MCL 451.2101 TO 451.2703**, the
12 federal national mortgage association, the government national
13 mortgage association, the federal home loan mortgage corporation,
14 or a mortgage lender or mortgage servicer.

15 (j) "License" means a license issued under this act.

16 (k) "Licensee" means a person licensed or required to be
17 licensed under this act.

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

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

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

24 (m) "Mortgage lender" means a person who, directly or
25 indirectly, makes or offers to make mortgage loans.

26 (n) "Mortgage loan" means a loan secured by a first mortgage
27 on real property located in this state and used, or improved to be

1 used, as a dwelling and designed for occupancy by 4 or fewer
2 families or a land contract covering real property located in this
3 state used, or improved to be used, as a dwelling and designed for
4 occupancy by 4 or fewer families. A mortgage loan does not include
5 a home improvement installment contract under the home improvement
6 finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

7 (o) "Mortgage servicer" means a person who, directly or
8 indirectly, services or offers to service mortgage loans.

9 (p) "Person" means an individual, corporation, **LIMITED**
10 **LIABILITY COMPANY**, partnership, association, governmental entity,
11 or any other legal entity.

12 (q) "Real estate broker" means a broker or associate broker
13 licensed under article 25 of the occupational code, 1980 PA 299,
14 MCL 339.2501 to 339.2518.

15 (r) "Real estate salesperson" means a salesperson licensed
16 under article 25 of the occupational code, 1980 PA 299, MCL
17 339.2501 to 339.2518.

18 (s) "Register" means filing a notice with the commissioner on
19 a form prescribed by the commissioner that notifies the
20 commissioner of the intent to engage in the activities of a
21 mortgage broker, mortgage lender, or mortgage servicer in this
22 state and the payment of any fees required under this act, along
23 with the other documents, proofs, and fees required by the
24 commissioner.

25 (t) "Registrant" means a person registered or required to be
26 registered under this act.

27 (u) "Service" means the collection or remittance, or the right

1 or obligation to collect or remit, for a lender, noteowner,
2 noteholder, mortgage servicer, or the licensee's or registrant's
3 own account of 4 or more installment payments of the principal,
4 interest, or an amount placed in escrow under a mortgage loan,
5 mortgage servicing agreement, or an agreement with the mortgagor.

6 Sec. 29. (1) A person or any owner, partner, member, officer,
7 director, trustee, employee, agent, broker, or their representative
8 acting on the authority of ~~such~~ **THAT** person who willfully or
9 intentionally does any of the following is guilty of a misdemeanor
10 punishable by a fine of not more than \$5,000.00, or imprisonment
11 for not more than 3 years, or both:

12 (a) Engages in this state in the business of a mortgage
13 broker, mortgage lender, or mortgage servicer without a license or
14 registration required under this act.

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

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

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

24 (iii) A construction loan.

25 (iv) A loan that provides in writing that the loan proceeds
26 shall be disbursed to or for the benefit of the borrower in
27 installments or upon the request of the borrower or upon the

1 completion of renovations or repairs to the dwelling situated on
2 the real property subject to the mortgage loan.

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

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

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

10 (A) The broker-dealer is registered under the uniform
11 securities act, ~~Act No. 265 of the Public Acts of 1964, being~~
12 ~~sections 451.501 to 451.818 of the Michigan Compiled Laws 1964 PA~~
13 **265, MCL 451.501 TO 451.818, OR THE UNIFORM SECURITIES ACT (2002),**
14 **MCL 451.2101 TO 451.2703.**

15 (B) The broker-dealer is not an affiliate of the mortgage
16 lender unless the person acquired the broker-dealer registration,
17 directly or indirectly, before September 1, 1987 under ~~Act No. 265~~
18 ~~of the Public Acts of 1964~~ **THE UNIFORM SECURITIES ACT, 1964 PA 265,**
19 **MCL 451.501 TO 451.818,** was affiliated with a mortgage lender
20 before September 1, 1987, and has continuously maintained that
21 registration subsequent to September 1, 1987. For purposes of this
22 subparagraph, if an aggregate of more than 10% of the outstanding
23 voting stock or interest in a corporation, unincorporated
24 organization, partnership, or other legal entity that is a broker-
25 dealer or mortgage lender is sold, transferred, assigned, or
26 otherwise conveyed subsequent to September 1, 1987, the
27 registration ~~shall be~~ **IS** considered to not have been continuously

1 maintained.

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

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

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

11 (B) An individual who, after the purchase, has an investment
12 of more than \$50,000.00 in such loans or securities, including
13 installment payments to be made within 1 year after purchase by the
14 individual, has either personal income before taxes in excess of
15 \$100,000.00 for his or her last fiscal year or latest 12-month
16 period and is capable of bearing the economic risk, or net worth in
17 excess of \$1,000,000.00, and has the knowledge and experience in
18 financial and business matters that he or she is capable of
19 evaluating the merits and risks of the prospective investment, or
20 has obtained the advice of an attorney, certified public
21 accountant, or investment adviser registered under the investment
22 advisers act of 1940, or an investment adviser registered under Act
23 ~~No. 265 of the Public Acts of 1964~~ **THE UNIFORM SECURITIES ACT, 1964**
24 **PA 265, MCL 451.501 TO 451.818, OR THE UNIFORM SECURITIES ACT**
25 **(2002), MCL 451.2101 TO 451.2703**, with respect to the merits and
26 risks of the prospective investment.

27 (iv) A transferor or assignor does not maintain its principal

1 place of business in this state and the transferee or assignee is
2 not a resident of this state and does not maintain its principal
3 place of business in this state.

4 (2) If the commissioner finds that a licensee or registrant
5 has violated this act or the rules promulgated under this act, the
6 commissioner may do 1 or more of the following:

7 (a) Assess a civil fine against the licensee, registrant, or a
8 person who controls the licensee or registrant of not more than
9 \$1,000.00 for each violation, except that the licensee, registrant,
10 or a person shall not be fined more than \$10,000.00 for a
11 transaction resulting in more than 1 violation, plus the costs of
12 investigation.

13 (b) Suspend or revoke a license or registration or refuse to
14 issue a license or renew a license or registration.

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

20 (3) A civil fine assessed under subsection (2) may be sued for
21 and recovered by and in the name of the commissioner and may be
22 collected and enforced by summary proceedings by the attorney
23 general. Each individual injured by a violation of this act or a
24 rule shall constitute a separate violation. In determining under
25 subsection (2) the amount of a fine, whether to suspend or revoke a
26 license or registration, whether to refuse to issue or renew a
27 license, or the amount of restitution, the commissioner shall

1 consider the extent to which the violation was a knowing and
2 willful violation, the extent of the injury suffered because of the
3 violation, the corrective action taken by the licensee or
4 registrant to ensure that the violation will not be repeated, and
5 the record of the licensee or registrant in complying with this
6 act. Any proceedings under this subsection shall be subject to the
7 procedures of the administrative procedures act of 1969, ~~Act No.~~
8 ~~306 of the Public Acts of 1969, being sections 24.201 to 24.328 of~~
9 ~~the Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328.~~

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

14 Enacting section 1. This amendatory act does not take effect
15 unless Senate Bill No.____ or House Bill No. 5008(request no.
16 00420'07) of the 94th Legislature is enacted into law.