

SENATE BILL No. 828

October 16, 2007, Introduced by Senators CLARKE, RICHARDVILLE, ANDERSON, SANBORN, KAHN, GLEASON, SCHAUER, BIRKHOLZ, STAMAS, OLSHOVE, BROWN, CASSIS and HUNTER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1987 PA 173, entitled
"Mortgage brokers, lenders, and servicers licensing act,"
by amending the title and section 1a (MCL 445.1651a), section 1a as
amended by 2002 PA 391.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to define and regulate mortgage brokers, mortgage
lenders, and mortgage servicers **AND THEIR LOAN OFFICERS**; to
prescribe the powers and duties of ~~the financial institutions~~
~~bureau and~~ certain public officers and agencies; to provide for the
promulgation of rules; and to provide remedies and penalties.

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

1 ~~otherwise.~~

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.**

8 (C) ~~(b)~~ "Commissioner" means the commissioner of the office of
9 financial and insurance services of the department of ~~consumer and~~
10 ~~industry services~~ **LABOR AND ECONOMIC GROWTH** or his or her
11 authorized agent.

12 (D) ~~(c)~~ "Construction loan" means a mortgage loan ~~for the~~
13 ~~purpose of constructing~~ **TO CONSTRUCT** a 1-to-4 family dwelling,
14 ~~which loan~~ **THAT** is approved and closed before completion of the
15 construction of the improvement on the real property.

16 (E) ~~(d)~~ "Control person" means a director or executive officer
17 of a licensee **OR REGISTRANT** or a person who has the authority to
18 participate in the direction, directly or indirectly through 1 or
19 more other persons, of the management or policies of a licensee or
20 registrant.

21 (F) ~~(e)~~ "Depository financial institution" means a state or
22 nationally chartered bank, a state or federally chartered savings
23 and loan association, savings bank, or credit union, or an entity
24 of the federally chartered farm credit system.

25 (G) ~~(f)~~ "Executive officer" means an officer, member, or
26 partner of a licensee or registrant. ~~, including~~ **THE TERM INCLUDES**
27 **THE** chief executive officer, president, vice president, chief

1 financial officer, controller, **OR** compliance officer ~~—or~~ **AN**
 2 **INDIVIDUAL HOLDING** any other similar position.

3 (H) ~~(g)~~—"Financial licensing act" means the consumer financial
 4 services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the
 5 acts listed in section 2 of the consumer financial services act,
 6 1988 PA 161, MCL 487.2052.

7 (I) ~~(h)~~—"Firm commitment" means an underwriting in which a
 8 broker-dealer commits to buy the mortgage loan or the entire issue
 9 of securities based upon or backed by 1 or more mortgage loans and
 10 assumes all financial responsibility for any unsold securities.

11 (J) ~~(i)~~—"Individual investor" means a person ~~residing~~ **THAT**
 12 **RESIDES** in this state or ~~having~~ **HAS** its principal place of business
 13 in this state. ~~—other than~~ **THE TERM DOES NOT INCLUDE** a bank,
 14 savings bank, savings and loan association, credit union, trust
 15 company, insurance company, investment company as defined in the
 16 investment company act of 1940, ~~title I of chapter 686, 54 Stat.~~
 17 ~~789, 15 U.S.C. USC~~ 80a-1 to ~~80a-3 and 80a-4 to~~ 80a-64, pension or
 18 profit sharing plan ~~—IF~~ the assets of ~~which~~ **THE PLAN** are managed
 19 by a bank or trust company or other institutional manager,
 20 financial institution, institutional manager, broker-dealer that is
 21 a member of the New York stock exchange or registered under the
 22 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, the
 23 federal national mortgage association, the government national
 24 mortgage association, the federal home loan mortgage corporation,
 25 or a mortgage lender or mortgage servicer.

26 (K) ~~(j)~~—"License" means a license issued under this act.

27 (L) ~~(k)~~—"Licensee" means a person licensed or required to be

1 licensed under this act.

2 (M) "LOAN OFFICER" MEANS AN INDIVIDUAL WHO IS AN EMPLOYEE OF
3 ONLY 1 MORTGAGE BROKER, MORTGAGE LENDER, OR MORTGAGE SERVICER; WHO
4 ORIGINATES MORTGAGE LOANS; AND WHO IS NOT AN EMPLOYEE OF A
5 DEPOSITORY FINANCIAL INSTITUTION OR A SUBSIDIARY OR AFFILIATE OF A
6 DEPOSITORY FINANCIAL INSTITUTION. THE TERM DOES NOT INCLUDE AN
7 INDIVIDUAL WHO PERFORMS CLERICAL OR ADMINISTRATIVE TASKS FOR HIS OR
8 HER EMPLOYER IF THAT INDIVIDUAL DOES NOT SOLICIT BORROWERS, ACCEPT
9 APPLICATIONS, OR NEGOTIATE THE TERMS OF THE LOANS ON THE EMPLOYER'S
10 BEHALF.

11 (N) "LOAN OFFICER REGISTRANT" MEANS AN INDIVIDUAL WHO MEETS
12 ANY OF THE FOLLOWING:

13 (i) HE OR SHE IS CURRENTLY REGISTERED UNDER SECTION 2A.

14 (ii) HE OR SHE FILED AN APPLICATION FOR REGISTRATION UNDER
15 SECTION 2A WITHIN HIS OR HER FIRST 90 CALENDAR DAYS OF EMPLOYMENT
16 WITH A LICENSEE OR REGISTRANT AND THAT APPLICATION IS PENDING.

17 (iii) HE OR SHE HAS BEEN EMPLOYED AS A LOAN OFFICER BY A
18 LICENSEE OR REGISTRANT FOR FEWER THAN 91 CALENDAR DAYS.

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

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

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

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

27 (Q) ~~(n)~~"Mortgage loan" means a loan secured by a first

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

9 (R) ~~(e)~~—"Mortgage servicer" means a person who, directly or
 10 indirectly, services or offers to service mortgage loans.

11 (S) **"ORIGINATE" MEANS ANY OF THE FOLLOWING:**

12 (i) **TO NEGOTIATE, ARRANGE, OR OFFER TO NEGOTIATE OR ARRANGE A**
 13 **MORTGAGE LOAN BETWEEN A MORTGAGE LENDER AND 1 OR MORE INDIVIDUALS.**

14 (ii) **TO PLACE, ASSIST IN PLACING, OR FIND A MORTGAGE LOAN FOR 1**
 15 **OR MORE INDIVIDUALS.**

16 (T) ~~(p)~~—"Person" means an individual, corporation, **LIMITED**
 17 **LIABILITY COMPANY**, partnership, association, governmental entity,
 18 or any other legal entity.

19 (U) ~~(q)~~—"Real estate broker" means a broker or associate
 20 broker licensed under article 25 of the occupational code, 1980 PA
 21 299, MCL 339.2501 to 339.2518.

22 (V) ~~(r)~~—"Real estate salesperson" means a salesperson licensed
 23 under article 25 of the occupational code, 1980 PA 299, MCL
 24 339.2501 to 339.2518.

25 (W) ~~(s)~~—"Register" means filing a notice with the commissioner
 26 on a form prescribed by the commissioner that notifies the
 27 commissioner of the intent to engage in the activities of a

1 mortgage broker, mortgage lender, ~~or~~ mortgage servicer, **OR LOAN**
 2 **OFFICER** in this state and the payment of any fees required under
 3 this act, along with the other documents, proofs, and fees required
 4 by the commissioner.

5 (X) ~~(t)~~ "Registrant" means a person **THAT IS** registered **UNDER**
 6 **SECTION 6** or required to ~~be registered~~ **REGISTER** under ~~this act~~
 7 **SECTION 6. THE TERM DOES NOT INCLUDE A LOAN OFFICER REGISTRANT.**

8 (Y) ~~(u)~~ "Service" means the collection or remittance, or the
 9 right or obligation to collect or remit, for a lender, noteowner,
 10 noteholder, mortgage servicer, or the licensee's or registrant's
 11 own account of 4 or more installment payments of the principal,
 12 interest, or an amount placed in escrow under a mortgage loan,
 13 mortgage servicing agreement, or an agreement with the mortgagor.

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

17 (a) Senate Bill No. 826.

18
 19 (b) House Bill No. 5288.

20
 21 (c) Senate Bill No. 829.

22
 23 (d) House Bill No. 5289.

24
 25 (e) Senate Bill No. 830.

26
 27 (f) Senate Bill No. 831.

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- 2 (g) House Bill No. 5287.
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- 4 (h) House Bill No. 5290.
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- 6 (i) House Bill No. 5291.
- 7
- 8 (j) Senate Bill No. 833.
- 9
- 10 (k) Senate Bill No. 832.
- 11