

Act No. 325  
Public Acts of 2008  
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**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

**Introduced by Senators Brown, Richardville, Sanborn, Barcia, Birkholz, Pappageorge, Garcia and Basham**

# **ENROLLED SENATE BILL No. 1552**

AN ACT to amend 1981 PA 125, entitled “An act to regulate secondary mortgage loans; to prescribe powers and duties of certain state agencies and officials; to require certain fees; to provide for the establishment of a revolving fund; to provide for the promulgation of rules; and to prescribe civil fines and penalties,” by amending the title and sections 1, 2, 6, 6a, 6b, 11, 13, 20, 22, and 27 (MCL 493.51, 493.52, 493.56, 493.56a, 493.56b, 493.61, 493.63, 493.70, 493.72, and 493.77), the title and sections 6, 11, 13, 20, 22, and 27 as amended and section 6a as added by 1997 PA 91, sections 1 and 6b as amended by 2002 PA 392, and section 2 as amended by 2007 PA 46, and by adding sections 2a, 2b, 2c, 2d, and 26a.

*The People of the State of Michigan enact:*

## **TITLE**

An act to regulate secondary mortgage loans; to regulate secondary mortgage brokers, lenders, servicers, and loan officers; to prescribe powers and duties of certain state agencies and officials; to require certain fees; to provide for the establishment of a revolving fund; to provide for the promulgation of rules; and to provide remedies and prescribe penalties.

Sec. 1. (1) This act shall be known and may be cited as “the secondary mortgage loan act”.

(2) As used in this act:

(a) “Broker” means a person who, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person attempting to obtain a secondary mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make a secondary mortgage loan.

(b) “Commissioner” means the commissioner of the office of financial and insurance regulation of the department of energy, labor, and economic growth or his or her authorized representatives.

(c) “Control person” means a director or executive officer of a licensee or registrant or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or registrant.

(d) “Depository financial institution” means a state or nationally chartered bank, state or federal chartered savings and loan association, savings bank, or credit union, or any other institution whose deposits are insured by an agency of the federal government.

(e) “Exclusive broker” means a person that brokers secondary mortgage loans solely to 1 licensee or registrant, is compensated solely by that licensee or registrant, and is indemnified by the licensee or registrant as provided in

section 6. The actions or practices of an exclusive broker in brokering a secondary mortgage loan are the actions or practices of the licensee or registrant.

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

(g) "Financial licensing act" means any of the financial licensing acts, as that term is defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(h) "Lender" means a person who, directly or indirectly, makes or offers to make secondary mortgage loans.

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

(j) "Loan servicing customer" means a mortgagor whose secondary mortgage loan is being serviced by a servicer.

(k) "Open-end credit" means credit extended under a plan in which both of the following apply:

(i) The licensee or registrant reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

(l) "Originate" means any of the following:

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

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

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

(n) "Registrant" means a person that is registered or required to register as a broker, lender, or servicer under this act. The term does not include a secondary mortgage loan officer registrant or depository financial institution.

(o) "Secondary mortgage loan" means a loan that has a term of 90 days or more; that is made to a person for personal, family, or household purposes; and that is secured by a mortgage on an interest in real property that is used as a dwelling and is subject to a lien of 1 or more outstanding mortgages. A secondary mortgage loan may be secured by other collateral in addition to real property. Notwithstanding the place of execution, nominal or real, of a secondary mortgage loan, if the real property that secures the loan is located in this state, a secondary mortgage loan is subject to this act and all other applicable laws of this state.

(p) "Secondary mortgage loan officer" means an individual who is an employee or agent of a broker, lender, or servicer; who originates secondary mortgage loans; and who is not an employee of a depository financial institution or a subsidiary or affiliate of a depository financial institution.

(q) "Secondary mortgage loan officer registrant" means either of the following:

(i) An individual who is currently registered under section 2a or 2c.

(ii) An individual who is not required to register to perform services of a secondary mortgage loan officer under section 2a(9).

(r) "Service" means the collection or remittance for a lender, noteowner, or noteholder or a licensee's own account of 4 or more installment payments of the principal of, interest of, or an amount placed in escrow under a secondary mortgage loan, mortgage servicing agreement, or an agreement with a mortgagor.

(s) "Servicer" means a person who, directly or indirectly, services or offers to service secondary mortgage loans.

Sec. 2. (1) A person shall not act as a broker, lender, or servicer without first obtaining a license under this act or registering under section 3a, unless 1 or more of the following apply:

(a) The person is providing secondary mortgage loan officer services as an employee or agent of only 1 broker, lender, or servicer and is registered as a secondary mortgage loan officer registrant if that registration is required under this act.

(b) The person is an exclusive broker. This subdivision does not apply after March 31, 2009.

(c) The person is licensed under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(d) The person acts as a lender but makes or negotiates 2 or fewer secondary mortgage loans in a calendar year.

(e) The person acts as a servicer but services 10 or fewer secondary mortgage loans in a calendar year.

(f) The person is an individual and an employee of a professional employer organization, as that term is defined in section 113 of the Michigan business tax act, 2007 PA 36, MCL 208.1113, solely acting as a secondary mortgage loan originator of only 1 broker or lender. The broker or lender shall do all of the following:

(i) Direct and control the activities of the individual under this act.

(ii) Be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under section 6.

(2) By October 31, 1997, a servicer that was exempt from regulation under this act shall either file with the commissioner an application for a license or registration under section 3 or discontinue all activities subject to this act.

(3) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, a person subject to this act shall not include in its name or assumed name the words "bank", "banker", "banc", "bankcorp", "bancorp", or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee to use the term "mortgage banker" or "mortgage banking" in its name or assumed name.

(4) A person subject to this act whose name or assumed name on January 1, 1997 contained a word prohibited by subsection (3) may continue to use that name or assumed name.

Sec. 2a. (1) Beginning April 1, 2009, an employee or agent of a licensee or registrant, other than an individual described in subsection (9), shall not perform services of a secondary mortgage loan officer unless he or she registers or otherwise complies with this section.

(2) A licensee or registrant that employs or offers to employ, or engages or offers to engage as an agent, an individual, other than an individual described in subsection (9), as a secondary mortgage loan officer to originate secondary mortgage loans after March 31, 2009 shall conduct a criminal history check of that individual. All of the following apply to the criminal history check of an individual required under this subsection:

(a) The department of state police and the federal bureau of investigation shall perform the criminal history check required under this subsection.

(b) The individual who is the subject of the criminal history check shall have his or her fingerprints taken by a law enforcement agency or by another person that the commissioner determines is qualified to take fingerprints; pay the agency or person the fees required by the department of state police under section 3 of 1935 PA 120, MCL 28.273, and by the federal bureau of investigation, for processing fingerprints and completing a criminal history check; and request that the agency or person forward the fingerprints, a request for a criminal history check of the individual in the format and as prescribed by the department of state police, and the fees to the department of state police.

(c) The department of state police shall forward the fingerprints and appropriate fee to the federal bureau of investigation for a national criminal history check.

(d) After receiving a proper request and the required fees under this subsection, the department of state police shall conduct the criminal history check and provide the licensee or registrant with the results of the criminal history check. The results shall contain any criminal history record information concerning the individual maintained by the department of state police and the results of the federal bureau of investigation's criminal history check.

(e) The licensee or registrant shall submit the results of the criminal history check described in subdivision (d) to the commissioner with the application for secondary mortgage loan officer registration described in subsection (4) or for purposes of subsection (5).

(f) The criminal history check required under this subsection may be conducted by the licensee or registrant, requested of and performed by the department of state police and the federal bureau of investigation, and submitted to the commissioner at any time on or after January 1, 2009.

(g) If a criminal arrest fingerprint card is subsequently submitted to the department of state police and matches against a fingerprint that was submitted under this subsection and stored by the department of state police in its automated fingerprint identification system (AFIS) database, the department of state police shall notify the commissioner.

(3) Beginning April 1, 2009, if an individual, other than an individual described in subsection (9), is employed or engaged as an agent to originate secondary mortgage loans by a licensee or registrant, that individual shall apply for secondary mortgage loan officer registration under this section within 90 days after he or she begins providing services as an employee or agent of the licensee or registrant, by submitting the application described in subsection (4), in writing, and including with the application the annual operating fee established under section 6a(6).

(4) The commissioner shall prescribe the form of application for registration as a secondary mortgage loan officer. Subject to subsection (8), the application form shall require that an applicant provide at least all of the following to the commissioner:

(a) The name and home address of the applicant.

(b) A statement as to whether the applicant has ever been convicted of, or pled no contest to, any of the following:

(i) A misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) A felony.

(c) A statement as to whether the applicant has had an application denied, or a license, registration, or similar authority revoked or suspended, to practice any profession or occupation in any jurisdiction, including, but not limited to, licensure or registration as a broker, lender, or servicer in which the applicant held more than 25% of the ownership interest or as a secondary mortgage loan officer.

(d) Except for an application described in subsection (7), proof in the form of a certificate of completion or other evidence acceptable to the commissioner that the applicant has completed at least 24 hours of live professional classroom instruction in this state in an introductory course in residential mortgage lending that is sponsored or provided by a person, and taught by an instructor, approved by the commissioner. The 24 hours of instruction shall include at least 3 hours of live classroom instruction concerning state and federal laws and regulations governing residential mortgage lending, the content of which has been approved by the commissioner.

(e) Evidence acceptable to the commissioner that the applicant correctly answered at least 75% of the questions on an examination approved by the commissioner that tests an applicant's knowledge of the contents of the introductory course in residential mortgage lending described in subdivision (d).

(f) The results of the criminal history check described in subsection (2).

(g) The signature of the applicant and his or her declaration that the information and statements made in or included with the application are true, accurate, and complete.

(h) The signature of an executive officer on behalf of the licensee or registrant that employs or offers to employ, or engages or offers to engage as an agent, the applicant, and the executive officer's certification on behalf of the licensee or registrant that the information and statements in or included with the application are true, accurate, and complete to the best of his or her knowledge and belief.

(i) Any other information required by the commissioner.

(5) Beginning April 1, 2009, an applicant for secondary mortgage loan officer registration may perform services as a secondary mortgage loan officer while his or her application is pending if all of the following are met:

(a) The licensee or registrant that is the employer or principal of the applicant has completed the criminal history check of the applicant described in subsection (2) and submitted the results of that criminal history check to the commissioner.

(b) The criminal history check described in subdivision (a) does not disclose that the applicant has been convicted of, or pled no contest to, any of the following:

(i) A felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) Within the 10-year period preceding the date of the application, a felony other than a felony described in subparagraph (i).

(c) The licensee or registrant that is the employer or principal of the applicant has provided the commissioner with written notice that the applicant is beginning to provide services as a secondary mortgage loan officer for the licensee or registrant.

(6) The commissioner shall not issue a registration to any of the following:

(a) An applicant who has been convicted of, or pled no contest to, any of the following:

(i) A felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) Within the 10-year period preceding the date of the application, a felony other than a felony described in subparagraph (i).

(b) An applicant against whom the commissioner has issued a prohibition order under section 14a.

(c) An applicant for whom the commissioner has not received the results of the criminal history check described in subsection (2).

(d) An individual described in subsection (9).

(7) The commissioner must register a secondary mortgage loan officer who meets all of the following:

(a) For the 5-year period immediately preceding the effective date of the amendatory act that added this section, he or she was employed or engaged as a secondary mortgage loan officer for at least 4-1/2 years by 1 or more licensees, registrants, or persons exempt from this act under section 29 or 29a.

(b) He or she was not the subject of any prohibition orders issued by the commissioner under section 14a in the 5-year period immediately preceding the effective date of the amendatory act that added this section.

(c) Before April 1, 2009, he or she takes the examination described in subsection (4)(e) and correctly answers at least 75% of the questions on the examination.

(d) Before April 1, 2009, he or she submits an application under subsection (4). However, the applicant is not required to complete or submit proof of completion of the instruction described in subsection (4)(d).

(e) He or she is not an applicant described in subsection (6).

(8) The commissioner may waive any of the requirements of this section for secondary mortgage loan officer registration if the applicant has a valid, similar license or registration from another state that has a reciprocal agreement with the commissioner, except subsection (6)(a) and (c).

(9) Beginning April 1, 2009, an individual who meets all of the following may perform services of a secondary mortgage loan officer without registering under or otherwise complying with this section:

(a) Is an employee or agent of a broker, lender, or servicer that is also a mortgage broker, mortgage lender, or mortgage servicer under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(b) Is currently registered as a loan officer under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(10) An individual described in subsection (9) is considered a secondary mortgage loan officer registrant for purposes of this act.

Sec. 2b. (1) The commissioner may disclose, provide, or make available to the public the names, business addresses, and business telephone numbers of secondary mortgage loan officer registrants. The commissioner shall not disclose, provide, or make available to the public any other personal identifying information about secondary mortgage loan officer registrants or applicants for secondary mortgage loan officer registration.

(2) Beginning April 1, 2009, an individual employed or engaged as an agent by a licensee or registrant as a secondary mortgage loan officer shall not use the title or designation "loan officer", "loan originator", "mortgage loan officer", "mortgage loan originator", "secondary mortgage loan officer", or "secondary mortgage loan originator" if he or she is not a secondary mortgage loan officer registrant. A secondary mortgage loan officer registrant and the employer or principal of a secondary mortgage loan officer registrant shall not use the word "registered", "certified", or any word of similar import in his or her title or designation to identify him or her as an individual who has met the registration requirements of this act unless use of that word is approved by the office of financial and insurance regulation.

(3) Beginning April 1, 2009, a secondary mortgage loan officer shall not directly or indirectly receive any compensation, commission, fee, points, or other remuneration or benefits for originating a secondary mortgage loan unless both of the following are met:

(a) The secondary mortgage loan officer is a secondary mortgage loan officer registrant or exempt under section 2a(9).

(b) The compensation, commission, fee, points, or other remuneration or benefits are paid by the licensee or registrant for which the secondary mortgage loan officer originated that secondary mortgage loan.

(4) Beginning April 1, 2009, a broker, lender, or servicer shall not directly or indirectly pay any compensation, commission, fee, points, or other remuneration or benefits to any of the following:

(a) A secondary mortgage loan officer who is not a secondary mortgage loan officer registrant.

(b) A secondary mortgage loan officer registrant who is not an employee or agent of that broker, lender, or servicer. As used in this subdivision, "employee" means that term as defined in section 3401 of the internal revenue code, 26 USC 3401.

Sec. 2c. (1) A secondary mortgage loan officer registration is valid for 1 calendar year and terminates on December 31 unless it is renewed on or before that date.

(2) Subject to subsection (6), to renew the secondary mortgage loan officer registrations of any employees or agents of a licensee or registrant, the licensee or registrant shall submit an application for renewal before December 1 of the year of the current secondary mortgage loan officer registrations. The licensee or registrant shall include with the application the annual operating fee established in section 6a(6) for each secondary mortgage loan officer registrant included in the application.

(3) The commissioner shall prescribe the form of the application for renewal of secondary mortgage loan officer registrations under subsection (2) and the process for submitting an application for renewal. The application form shall require that an applicant provide at least all of the following information about each secondary mortgage loan officer registrant included in the application for renewal:

(a) The name, address, and current license or registration number of the applicant.

(b) The name and home address of the secondary mortgage loan officer registrant.

(c) The current registration number of the secondary mortgage loan officer registrant.

(d) A statement as to whether the secondary mortgage loan officer registrant has had an application denied, or a license, registration, or similar authority revoked or suspended, to practice any profession or occupation in any jurisdiction, including, but not limited to, licensure or registration as a broker, lender, or servicer in which the secondary mortgage loan officer registrant held more than 25% of the ownership interest or as a secondary mortgage loan officer.

(e) Except as provided in subsection (7), proof acceptable to the commissioner that the secondary mortgage loan officer registrant has in the immediately preceding calendar year completed at least 6 hours of instruction in a course or courses relevant to the residential mortgage lending industry, the content of which has been approved by the commissioner. The 6 hours of instruction shall include at least 1.5 hours related to legal and regulatory compliance and at least 1 hour related to ethics and fraud prevention. All of the following apply to the course or courses described in this subdivision:

(i) A course may utilize a live instructor or be conducted by electronic means, including, but not limited to, the internet, digital broadcast, or satellite network. However, a course conducted by electronic means must include a method of confirming a secondary mortgage loan officer registrant's completion of the course.

(ii) The course must be provided by a person approved by the commissioner.

(f) Any other information required by the commissioner.

(4) Before a licensee or registrant submits an application for renewal of a secondary mortgage loan officer registration for a secondary mortgage loan officer registrant under subsection (2), the secondary mortgage loan officer registrant shall provide an affidavit to the licensee or registrant that discloses any criminal conviction of or plea of no contest by the secondary mortgage loan officer registrant occurring between 1 of the following, as applicable, and the date of the affidavit:

(a) If the renewal application is for the secondary mortgage loan officer registrant's first renewal of his or her secondary mortgage loan officer registration, the date of the background records check provided at the time of his or her initial registration.

(b) If the renewal application is for the secondary mortgage loan officer registrant's second or subsequent renewal of his or her secondary mortgage loan officer registration, the date of the most recent affidavit provided by the secondary mortgage loan officer registrant to the licensee or registrant under this subsection.

(5) The commissioner shall not renew the secondary mortgage loan officer registration of any secondary mortgage loan officer who has ever been convicted of, or pled no contest to, any of the following:

(a) A felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(b) Within the 10-year period preceding the date of the application for renewal, a felony other than a felony described in subdivision (a).

(6) If an individual included in an application for renewal under subsection (2) is not currently registered and his or her secondary mortgage loan officer registration has not been renewed for a period of more than 5 consecutive calendar years, the individual must apply for a secondary mortgage loan officer registration under section 2b as a new applicant. The applicant may include in a renewal application under subsection (2) a request to renew the secondary mortgage loan officer registration for a secondary mortgage loan officer registrant who is not currently registered if his or her secondary mortgage loan officer registration has not been renewed for a period of fewer than 5 consecutive years.

(7) An applicant under subsection (2) for renewal of the secondary mortgage loan officer registration of a secondary mortgage loan officer registrant who has a valid, similar license or registration from another state that has instructional procedures and requirements for secondary mortgage loan officers approved by the commissioner may satisfy subsection (3)(e) by submitting proof that he or she is in compliance with the instructional requirements of that state at the time of application.

Sec. 2d. (1) A secondary mortgage loan officer registrant shall provide written notice to the commissioner within 10 days after any of the following occur:

(a) His or her employment or agency relationship with a licensee or registrant is terminated.

(b) He or she begins employment or an agency relationship with a licensee or registrant.

(c) There is a change in the home address or any personal telephone number or personal electronic mail address he or she previously provided to the commissioner.

(d) He or she is convicted of or pleads guilty or no contest to any of the following:

(i) A misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) A felony.

(2) A licensee or registrant shall provide written notice to the commissioner within 20 days after hiring or engaging an individual as a secondary mortgage loan officer or terminating the employment of or agency relationship with a secondary mortgage loan officer.

Sec. 6. (1) Except as otherwise provided in this section, at the time of filing an application for a license or registration or renewal of a license or registration, an applicant shall do all of the following:

(a) Provide proof of financial responsibility in the following amounts:

(i) \$25,000.00 for a license or registration to act as a broker who receives funds from a prospective borrower before the closing of the secondary mortgage loan or who acts as a lender.

(ii) \$125,000.00 for a license or registration to act as a servicer.

(iii) An additional \$20,000.00 is required from an applicant described in subparagraph (i) or (ii) for each exclusive broker through which that applicant conducts business regulated under this act. However, the aggregate of the additional amounts required from an applicant under this subdivision shall not exceed \$1,000,000.00. This subparagraph does not apply after March 31, 2009.

(b) Provide proof of financial responsibility by 1 of the following:

(i) A corporate surety bond payable to the commissioner that expires no earlier than the date the license or registration expires, executed by a corporate surety approved by the commissioner.

(ii) An irrevocable letter of credit upon which the applicant for a license or registration is the obligor that expires no earlier than the date the license or registration expires, that is issued by a depository financial institution, and the terms of which are approved by the commissioner.

(2) A licensee or registrant that conducts business regulated by this act through 1 or more exclusive brokers shall enter into an indemnification agreement, subject to the approval of the commissioner, to protect borrowers from monetary damages that may result from doing business with the exclusive brokers through which the licensee or registrant conducts business regulated by this act. The indemnification shall be provided in the amount and form required under subsection (1). This subsection does not apply after March 31, 2009.

(3) The bond or letter of credit required under subsection (1) shall be conditioned upon the licensee or registrant conducting its business as required under this act and all the rules promulgated under this act, and the payment of all money that becomes due to borrowers, secondary mortgage loan applicants, and the commissioner.

(4) The commissioner shall prioritize and pay claims against a proof of financial responsibility filed with the commissioner under this section in a manner that, in his or her discretion, best protects the public interest.

(5) Claims may only be filed against a proof of financial responsibility filed with the commissioner under this section by the commissioner and the licensee's or registrant's borrowers, secondary mortgage loan applicants, and loan servicing customers.

(6) Claims filed against a proof of financial responsibility filed with the commissioner under this section by a borrower or loan applicant shall involve only secondary mortgage loans or secondary mortgage loan applications secured or to be secured by real property used as a dwelling located in this state. The amount of the claim shall not exceed actual fees in connection with a loan application, overcharges of principal and interest, and excess escrow collections by the licensee or registrant.

(7) The commissioner may file a claim against a proof of financial responsibility filed with the commissioner under this section for payment of fines or fees due and payable to the commissioner and reimbursement of expenses incurred in investigating the licensee or registrant and expenses incurred in distributing proceeds of the proof of financial responsibility. A claim filed under this subsection shall be paid in full prior to payment of other claims against a proof of financial responsibility, unless the commissioner, in his or her discretion, waives in whole or in part the right to priority of payment.

(8) In the event that valid claims exceed the amount of a proof of financial responsibility filed with the commissioner under this section, each claimant shall be entitled only to a pro rata amount of his or her valid claim.

(9) A licensee that acts as a broker and that receives funds from a prospective borrower before the closing of the secondary mortgage loan shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a lender shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a servicer shall maintain a net worth of not less than \$100,000.00.

(10) Net worth under subsection (9) is determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license, or renewal of a license, is submitted to the commissioner. An applicant shall disclose its net worth on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and in accordance with generally accepted accounting principles. The following assets are excluded in the computation of net worth:

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

(b) An asset, except a construction loans receivable, secured by mortgages from related companies, due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest.

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

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

(e) Good will or value placed on insurance renewals or property management contract renewals or other similar intangible value.

(f) Organization costs.

Sec. 6a. (1) A registration or license, unless it is renewed, expires on December 31 of each year. A person may renew a registration or license by filing an application for license or registration renewal and paying the annual operating fee for the succeeding year. The application and payment shall be received by the commissioner on or before a date prescribed by the commissioner.

(2) Not later than 90 days after close of the fiscal year of a licensee or registrant, the licensee or registrant shall annually deliver to the commissioner a financial statement for the fiscal year prepared from the licensee's or registrant's books and records. At the licensee's or registrant's option, the financial statement may be any of the following:

(a) On a form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which the licensee or registrant represents to the commissioner to be true and complete.

(c) In a format prepared and certified by an independent certified public accountant licensed by a regulatory authority of any state or political subdivision of the United States.

(3) A registrant that is a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that timely files with the commissioner the financial statement required under section 7 of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1657, is exempt from the filing requirement of subsection (2).

(4) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, an applicant for a license shall pay to the commissioner a fee for investigating the applicant for a license and the annual operating fee established by the commissioner under subsection (5). To renew a license or registration that has not been suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee.

(5) If an initial license or registration described in subsection (4) will have an effective date of July 1 or later, the initial annual operating fee for that license is 1/2 of the annual operating fee.

(6) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the reasonably anticipated costs of the office of financial and insurance regulation for administering and enforcing this act. The fee schedule shall include all of the following:

(a) For the investigation of an applicant for a license, a fee of not less than \$400.00 or more than \$1,000.00.

(b) Subject to subsection (5), an annual operating fee for each licensee or registrant, based upon the number of secondary mortgage loans the licensee or registrant brokered to other parties that were closed during the previous calendar year, the number of secondary mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of secondary mortgage loans serviced by the licensee or registrant as of December 31 of the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under subsection (13).

(c) For amending or reissuing a license, registration, or secondary mortgage loan officer registration, a fee of not less than \$15.00 or more than \$200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to examine or investigate the records of the licensee or registrant and the cost of independent investigators employed under section 6b(3)(e).

(e) An annual fee from or on behalf of each secondary mortgage loan officer registrant in an amount established by the commissioner. For purposes of this subdivision, the commissioner shall establish an amount for the annual fee that is sufficient to defray the estimated cost of administering and enforcing the secondary mortgage loan officer registration provisions of this act. This subdivision does not apply to a secondary mortgage loan officer registrant described in section 2a(9).

(7) Fees received under this act are not refundable.

(8) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee or registrant for the recovery of the fees and penalties together with interest and costs.

(9) A licensee or registrant that fails to submit to the commissioner the reports as required by subsections (2) and (13) is subject to a penalty of \$25.00 for each day a required report is delinquent or \$1,000.00, whichever is less.

(10) A license or registration renewal fee that is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(11) Money received from the fees described in this section shall be deposited in the MBLSLA fund. As used in this subsection, "MBLSLA fund" means the restricted account created under section 8(8) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1658.

(12) The annual operating fees set by the commissioner shall not exceed the levels needed to cover the estimated cost of enforcement of this act.



(13) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required under this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required under this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

Sec. 6b. (1) The commissioner shall exercise general supervision and control over brokers, lenders, and servicers doing business in this state and secondary mortgage loan officers originating secondary mortgage loans in this state.

(2) In addition to the other powers granted by this act, the commissioner may do any of the following:

(a) Deny an application for a license, registration, or secondary mortgage loan officer registration.

(b) Conduct examinations and investigations of any person, as necessary to enforce this act and the rules promulgated under this act.

(c) Investigate complaints filed against licensees or registrants.

(d) Advise the attorney general or the prosecuting attorney of a county in which a broker, lender, or servicer is conducting business or in which a secondary mortgage loan officer resides that the commissioner believes a licensee, registrant, secondary mortgage loan officer registrant, or other person is violating this act. The attorney general or prosecuting attorney shall bring a legal action to enjoin the operation of the business of the broker, lender, or servicer or the originating of secondary mortgages by the secondary mortgage loan officer or prosecute violations of this act.

(e) Bring an action in the Ingham county circuit court to enjoin a person from participating in, continuing to practice, or from engaging in a practice that is an unsafe or injurious practice or that violates this act or a rule promulgated under this act.

(f) Order a person to cease and desist from a violation of this act or a rule promulgated under this act under section 14.

(g) Suspend, revoke, or refuse to issue a license, registration, or secondary mortgage loan officer registration under section 11.

(h) Assess a civil fine under section 27.

(i) Appoint a conservator under section 12a.

(j) Issue an order to prohibit a person from being employed by, an agent of, or control person of, a licensee or registrant under section 14a.

(k) Censure a licensee, registrant, or secondary mortgage loan officer registrant.

(3) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

(a) Issue a subpoena under section 15.

(b) Administer oaths under section 15.

(c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.

(d) Have free access during regular business hours to the offices, places of business, or other location where the licensee, registrant, or an affiliate of a licensee or registrant, maintains business-related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be available for public inspection or copying or divulged to any person except as follows:

(i) To the attorney general.

(ii) To a regulatory agency.

(iii) In connection with an enforcement action brought under this or another applicable act.

(iv) To law enforcement officials.

(v) To persons authorized by the Ingham county circuit court to receive the information.

(e) Employ independent investigators to conduct a part or all of an investigation, in the case of an investigation other than an examination.

Sec. 11. (1) A notice shall be given to a licensee, registrant, secondary mortgage loan officer registrant, or applicant of the commissioner's intention to enter an order to suspend or revoke a license, registration, or secondary mortgage loan officer registration or to refuse to issue a license, registration, or secondary mortgage loan officer registration. The

notice shall be in writing and served personally or sent by certified mail to the licensee, registrant, secondary mortgage loan officer registrant, or applicant.

(2) A licensee, registrant, secondary mortgage loan officer registrant, or applicant may request a hearing to contest the intention to enter an order or refusal under subsection (1) within 20 days after service of the notice. If a hearing regarding suspension, revocation, or refusal to issue a license, registration, or secondary mortgage loan officer registration is not requested, the commissioner shall enter a final order regarding the suspension, revocation, or refusal to issue a license, registration, or secondary mortgage loan officer registration. The hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The commissioner may suspend, revoke, or refuse to issue or renew a license, registration, or secondary mortgage loan officer registration if he or she finds that the licensee, registrant, or secondary mortgage loan officer registrant or an owner, director, officer, member, partner, stockholder, employee, or agent of a licensee, registrant, or secondary mortgage loan officer registrant has done any of the following:

(a) Made a material misstatement in an application.

(b) Engaged in fraud, deceit, or material misrepresentation in connection with any transaction subject to this act.

(c) Failed after 10 days' written notice of default, to pay an annual operating fee, to maintain in effect a bond as required by the commissioner, or to comply with a demand, ruling, or requirement of the commissioner lawfully made under this act.

(d) Either knowingly or without the exercise of due care to prevent it, violated this act or a rule promulgated under this act.

(3) The commissioner may suspend, revoke, or refuse to renew a license, registration, or secondary mortgage loan officer registration upon a finding of a fact or condition which, if the fact or condition had existed at the time of the original application for the license, registration, or secondary mortgage loan officer registration, clearly would have warranted the commissioner to refuse to issue the license, registration, or secondary mortgage loan officer registration originally.

(4) A licensee, registrant, or secondary mortgage loan officer registrant may surrender a license, registration, or secondary mortgage loan officer registration by delivering to the commissioner the license, registration, or secondary mortgage loan officer registration with written notice that the licensee, registrant, or secondary mortgage loan officer registrant surrenders the license, registration, or secondary mortgage loan officer registration. The surrender, suspension, or revocation of a license, registration, or secondary mortgage loan officer registration under this act shall not affect the licensee's, registrant's, or secondary mortgage loan officer registrant's civil or criminal liability for acts committed in violation of this act. The surrender of a license, registration, or secondary mortgage loan officer registration does not affect a proceeding to suspend or revoke a license, registration, or secondary mortgage loan officer registration.

(5) Except as otherwise provided by law, a surrender, suspension, or revocation of a license, registration, or secondary mortgage loan officer registration does not impair or affect the obligation of a preexisting contract between the licensee, registrant, or secondary mortgage loan officer registrant and another person.

(6) A licensee, registrant, or secondary mortgage loan officer registrant whose license, registration, or secondary mortgage loan officer registration certificate has been destroyed or lost may comply with this section by submitting to the commissioner a notarized affidavit of the loss accompanied by written notice that the licensee, registrant, or secondary mortgage loan officer registrant surrenders the license, registration, or secondary mortgage loan officer registration.

Sec. 13. (1) A license, registration, or secondary mortgage loan officer registration remains in force until the date of expiration or until surrendered, revoked, or suspended under this act. The commissioner may reinstate a suspended license, registration, or secondary mortgage loan officer registration or issue a new license, registration, or secondary mortgage loan officer registration to a licensee, registrant, or secondary mortgage loan officer registrant whose license, registration, or secondary mortgage loan officer registration has been revoked if the conditions under which the license, registration, or secondary mortgage loan officer registration was revoked have been corrected and the commissioner is satisfied, as the result of an investigation, that the conditions are not likely to recur.

(2) A person shall not transfer or assign a license or registration without the consent of the commissioner. The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee or registrant that is a corporation, or more than 25% of the interest in a licensee or registrant that is a limited liability company or partnership or other unincorporated legal entity is considered a transfer of a license or registration for purposes of this subsection.

Sec. 20. A licensee, registrant, or secondary mortgage loan officer registrant shall not make or offer to make a secondary mortgage loan except on the terms and conditions authorized by this act and the rules promulgated under this act.

Sec. 22. (1) A licensee or registrant shall not directly or indirectly assess any charges or fees in connection with making a secondary mortgage loan, except for any of the following, which may be included in the principal of the loan:

(a) Charges for credit life insurance or credit accident and health insurance as defined in section 3 of the credit insurance act, 1958 PA 173, MCL 550.603, or any other insurance under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, that is offered by the licensee or registrant and that the borrower has the option to purchase.

(b) If reasonable and necessary, the actual expenses incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a secondary mortgage loan by any of the following, as applicable:

(i) The licensee.

(ii) The registrant.

(iii) An exclusive broker of the licensee or registrant. This subparagraph does not apply after March 31, 2009.

(c) A nonrefundable processing fee that is not more than 5% of the gross amount of the loan.

(d) Other charges authorized under the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(e) A reasonable annual fee for the privilege of receiving open-end credit from the licensee or registrant.

(2) The charges authorized under this section are in addition to interest authorized by law and are not a part of the interest collected or agreed to be paid on the secondary mortgage loan within the meaning of the law of this state that limits the rate of interest that may be exacted in a transaction. The charges shall be paid only once by the borrower to the licensee or registrant.

(3) Any insurance sold by a licensee or registrant in connection with a secondary mortgage loan must comply with the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or the credit insurance act, 1958 PA 173 MCL 500.601 to 500.624, as applicable.

(4) If a licensee or registrant requires a borrower to purchase hazard insurance, the licensee or registrant shall not require the borrower to purchase the insurance through a particular agency or agent or from a particular insurer.

(5) This section does not prohibit a licensee or registrant from imposing the charges that are permitted by any federal lending program designed to promote the making of secondary mortgage loans.

Sec. 26a. A secondary mortgage loan officer registrant shall not do any of the following:

(a) Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

(b) Intentionally, or due to gross or wanton negligence, repeatedly fail to provide borrowers with any material disclosures of information required by law.

(c) Directly or indirectly make a false, misleading, or deceptive advertisement regarding secondary mortgage loans or the availability of secondary mortgage loans.

(d) Suppress or withhold from the commissioner any information that the secondary mortgage loan officer possesses and that, if submitted, would have made the secondary mortgage loan officer ineligible for registration or renewal of his or her secondary mortgage loan officer registration under this act at the time of application and would have allowed the commissioner to refuse to register the secondary mortgage loan officer.

(e) Be convicted of, or plead no contest to, any of the following:

(i) A misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) A felony.

(f) Refuse or fail to furnish any information or make any report required by the commissioner to issue or renew a secondary mortgage loan officer registration, or otherwise required by the commissioner, within a reasonable period of time, as determined by the commissioner, after requested by the commissioner.

Sec. 27. (1) In addition to the penalties provided by this act, a violation of this act with respect to a particular secondary mortgage loan transaction is also subject to the penalty and remedy provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(2) A person, association, nonprofit corporation, common law trust, joint stock company, limited liability company, or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or representative thereof who or which willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$15,000.00, imprisonment for not more than 1 year, or both:

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

(b) Acts as a secondary mortgage loan officer in this state without a secondary mortgage loan officer registration required under this act.

(c) Coerces or induces a real estate appraiser to inflate the value of real property used as collateral for a secondary 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.

(3) A person who violates this act or directly or indirectly counsels, aids, or abets in a violation is liable, in addition to other penalties and forfeitures imposed by this act, for a civil fine of not more than \$3,000.00 for each violation, except that a person shall not be fined more than \$30,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation. The civil fine shall be sued for and recovered by the commissioner and shall be collected and enforced by summary proceedings by the attorney general.

(4) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to do any of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Enjoin a person from engaging in, or who is about to engage in, a method, act, or practice that violates this act.

(c) Recover actual damages resulting from a violation of this act or \$250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action.

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

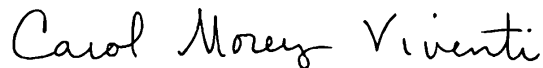
(a) Senate Bill No. 1553.

(b) Senate Bill No. 1554.

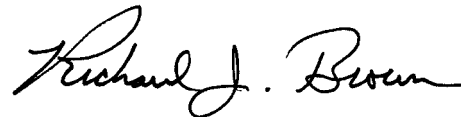
(c) Senate Bill No. 1555.

(d) House Bill No. 6562.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor