

**SUBSTITUTE FOR  
HOUSE BILL NO. 4688**

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 529.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

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

1 act.

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

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

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

11 (iii) A construction loan.

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

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

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

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

24 (A) The broker-dealer is registered under the uniform  
25 securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE UNIFORM**  
26 **SECURITIES ACT (2002), 2008 PA 551, MCL 451.2101 TO 451.2703.**

27 (B) The broker-dealer is not an affiliate of the mortgage

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

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

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

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

22 (B) An individual who, after the purchase, has an investment  
23 of more than \$50,000.00 in mortgage loans or securities  
24 representing an interest in 1 or more mortgage loans, including  
25 installment payments to be made within 1 year after purchase by the  
26 individual, has either personal income before taxes in excess of  
27 \$100,000.00 for his or her last fiscal year or latest 12-month

1 period and is capable of bearing the economic risk, or net worth in  
2 excess of \$1,000,000.00, and has the knowledge and experience in  
3 financial and business matters that he or she is capable of  
4 evaluating the merits and risks of the prospective investment, or  
5 has obtained the advice of an attorney, certified public  
6 accountant, or investment adviser registered under the investment  
7 advisers act of 1940, or an investment adviser registered under the  
8 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE**  
9 **UNIFORM SECURITIES ACT (2002), 2008 PA 551, MCL 451.2101 TO**  
10 **451.2703**, with respect to the merits and risks of the prospective  
11 investment.

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

16 (d) Coerces or induces a real estate appraiser to inflate the  
17 value of real property used as collateral for a mortgage loan,  
18 including, but not limited to, by doing any of the following:

19 (i) Representing or implying that a real estate appraiser will  
20 not be selected to conduct an appraisal of the real property or  
21 selected for future appraisal work unless the appraiser agrees in  
22 advance to a value, range of values, or minimum value for the real  
23 property.

24 (ii) Representing or implying that a real estate appraiser will  
25 not be paid for an appraisal unless the appraiser agrees in advance  
26 to a value, range of values, or minimum value for the real  
27 property.

1           (2) Subject to subsections (4) and (5), if the commissioner  
2 finds that a licensee, registrant, or loan officer registrant has  
3 violated, or directly or indirectly counseled, aided, or abetted in  
4 a violation, of this act or the rules promulgated under this act,  
5 the commissioner may do 1 or more of the following:

6           (a) Assess a civil fine against the licensee, registrant, or  
7 loan officer registrant or a person who controls the licensee,  
8 registrant, or loan officer registrant of not more than \$3,000.00  
9 for each violation, except that the licensee, registrant, or loan  
10 officer registrant or the person shall not be fined more than  
11 \$30,000.00 for a transaction resulting in more than 1 violation,  
12 plus the costs of investigation.

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

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

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

1 registration, or loan officer registration, whether to refuse to  
2 issue or renew a license or loan officer registration, or the  
3 amount of restitution, the commissioner shall consider the extent  
4 to which the violation was a knowing and willful violation, the  
5 extent of the injury suffered because of the violation, the  
6 corrective action taken by the licensee, registrant, or loan  
7 officer registrant to ensure that the violation will not be  
8 repeated, and the record of the licensee, registrant, or loan  
9 officer registrant in complying with this act. Any proceedings  
10 under this subsection are subject to the procedures of the  
11 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
12 24.328.

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

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