

SUBSTITUTE FOR
SENATE BILL NO. 381

A bill to amend 1981 PA 125, entitled
"The secondary mortgage loan act,"
by amending section 1 (MCL 493.51), as amended by 2008 PA 325.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (2) As used in this act:

4 (a) "Broker" means a person who, directly or indirectly, does
5 1 or both of the following:

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

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

10 (b) "Commissioner" means the commissioner of the office of
11 financial and insurance regulation of the department of energy,

1 labor, and economic growth or his or her authorized
2 representatives.

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

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

13 (e) "Exclusive broker" means a person that brokers secondary
14 mortgage loans solely to 1 licensee or registrant, is compensated
15 solely by that licensee or registrant, and is indemnified by the
16 licensee or registrant as provided in section 6. The actions or
17 practices of an exclusive broker in brokering a secondary mortgage
18 loan are the actions or practices of the licensee or registrant.

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

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

27 (h) "Lender" means a person who, directly or indirectly, makes

1 or offers to make secondary mortgage loans.

2 (i) "Licensee" means a person licensed or required to be
3 licensed under this act. **AS USED IN SECTIONS 2A, 2B, 2C, AND 2D,**
4 **THE TERM ALSO INCLUDES A LICENSEE UNDER THE CONSUMER FINANCIAL**
5 **SERVICES ACT, 1988 PA 161, MCL 487.2051 TO 487.2072.**

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

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

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

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

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

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

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

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

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

26 (o) "Secondary mortgage loan" means a loan that has a term of
27 90 days or more; that is made to a person for personal, family, or

1 household purposes; and that is secured by a mortgage on an
2 interest in real property that is used as a dwelling and is subject
3 to a lien of 1 or more outstanding mortgages. A secondary mortgage
4 loan may be secured by other collateral in addition to real
5 property. Notwithstanding the place of execution, nominal or real,
6 of a secondary mortgage loan, if the real property that secures the
7 loan is located in this state, a secondary mortgage loan is subject
8 to this act and all other applicable laws of this state.

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

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

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

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

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

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

27 Enacting section 1. This amendatory act does not take effect

1 unless all of the following bills of the 95th Legislature are
2 enacted into law:

3 (a) Senate Bill No. 379.

4 (b) Senate Bill No. 380.