

SENATE BILL No. 381

March 12, 2009, Introduced by Senators HARDIMAN, VAN WOERKOM, RICHARDVILLE and OLSHOVE and referred to the Committee on Banking and Financial Institutions.

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

1 makes or offers to make a secondary mortgage loan.

2 (b) "Commissioner" means the commissioner of the office of
3 financial and insurance regulation of the department of energy,
4 labor, and economic growth or his or her authorized
5 representatives.

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

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

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

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

27 (g) "Financial licensing act" means any of the financial

1 licensing acts, as that term is defined in section 2 of the
2 consumer financial services act, 1988 PA 161, MCL 487.2052.

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

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

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

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

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

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

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

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

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

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

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

1 or depository financial institution.

2 (o) "Secondary mortgage loan" means a loan that has a term of
3 90 days or more; that is made to a person for personal, family, or
4 household purposes; and that is secured by a mortgage on an
5 interest in real property that is used as a dwelling and is subject
6 to a lien of 1 or more outstanding mortgages. A secondary mortgage
7 loan may be secured by other collateral in addition to real
8 property. Notwithstanding the place of execution, nominal or real,
9 of a secondary mortgage loan, if the real property that secures the
10 loan is located in this state, a secondary mortgage loan is subject
11 to this act and all other applicable laws of this state.

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

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

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

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

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

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

3 Enacting section 1. This amendatory act does not take effect
4 unless all of the following bills of the 95th Legislature are
5 enacted into law:

6 (a) Senate Bill No. 379.

7

8 (b) Senate Bill No. 380.

9