

SENATE BILL No. 464

April 23, 2009, Introduced by Senators OLSHOVE, RICHARDVILLE, SANBORN, STAMAS, CLARKE, HUNTER, CHERRY, ANDERSON, HARDIMAN, PAPPAGEORGE, PATTERSON and KAHN 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 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 1, 2,
6, 6a, 6b, 11, 13, 20, and 22 as amended by 2008 PA 325 and section
27 as amended by 2008 PA 530; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to regulate secondary mortgage loans; to regulate
secondary mortgage brokers, lenders, **AND** servicers; ~~and loan~~
~~officers~~; to prescribe powers and duties of certain state agencies

1 and officials; to require certain fees; to provide for the
2 establishment of a revolving fund; to provide for the promulgation
3 of rules; and to provide remedies and prescribe penalties.

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

6 (2) As used in this act:

7 (a) "Broker" means a person who, directly or indirectly, does
8 1 or both of the following:

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

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

13 (b) "Commissioner" means the commissioner of the office of
14 financial and insurance regulation of the department of energy,
15 labor, and economic growth or his or her authorized
16 representatives.

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

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

27 ~~—— (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.~~

(E) "EMPLOYEE" MEANS AN INDIVIDUAL WHO MEETS BOTH OF THE FOLLOWING:

(i) HAS AN EMPLOYMENT RELATIONSHIP ACKNOWLEDGED BY THAT INDIVIDUAL AND THE LICENSEE OR REGISTRANT THAT ENGAGES THAT INDIVIDUAL TO ORIGINATE SECONDARY MORTGAGE LOANS.

(ii) IS TREATED AS AN EMPLOYEE BY THE LICENSEE OR REGISTRANT THAT ENGAGES THAT INDIVIDUAL TO ORIGINATE SECONDARY MORTGAGE LOANS FOR COMPLIANCE WITH FEDERAL INCOME TAX LAWS.

(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) "LICENSED SECONDARY MORTGAGE LOAN OFFICER" MEANS A SECONDARY MORTGAGE LOAN OFFICER WHO IS LICENSED AS A MORTGAGE LOAN ORIGINATOR UNDER THE MORTGAGE LOAN ORIGINATOR LICENSING ACT.

(J) ~~(i)~~—"Licensee" means a person licensed or required to be

1 licensed under this act.

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

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

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

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

11 (M) ~~(l)~~ "Originate" means any of the following:

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

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

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

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

22 (P) ~~(o)~~ "Secondary mortgage loan" means a loan that has a term
23 of 90 days or more; that is made to a person for personal, family,
24 or household purposes; and that is secured by a mortgage on an
25 interest in real property that is used as a dwelling and is subject
26 to a lien of 1 or more outstanding mortgages. A secondary mortgage
27 loan may be secured by other collateral in addition to real

1 property. Notwithstanding the place of execution, nominal or real,
2 of a secondary mortgage loan, if the real property that secures the
3 loan is located in this state, a secondary mortgage loan is subject
4 to this act and all other applicable laws of this state.

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

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

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

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

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

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

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

27 (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~~ **LICENSED** secondary mortgage loan officer ~~registrant~~ if that registration is required under ~~this act~~

THE MORTGAGE LOAN ORIGINATOR LICENSING ACT.

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

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

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

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

(E) ~~(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

1 discontinue all activities subject to this act.

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

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

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

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

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

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

25 ~~(iii) An additional \$20,000.00 is required from an applicant~~
26 ~~described in subparagraph (i) or (ii) for each exclusive broker~~
27 ~~through which that applicant conducts business regulated under this~~

1 ~~act. However, the aggregate of the additional amounts required from~~
2 ~~an applicant under this subdivision shall not exceed \$1,000,000.00.~~
3 ~~This subparagraph does not apply after March 31, 2009.~~

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

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

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

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

24 (2) ~~(3)~~—The bond or letter of credit required under subsection
25 (1) shall be conditioned upon the licensee or registrant conducting
26 its business as required under this act and all the rules
27 promulgated under this act, and the payment of all money that

1 becomes due to borrowers, secondary mortgage loan applicants, and
2 the commissioner.

3 (3) ~~(4)~~—The commissioner shall prioritize and pay claims
4 against a proof of financial responsibility filed with the
5 commissioner under this section in a manner that, in his or her
6 discretion, best protects the public interest.

7 (4) ~~(5)~~—Claims may only be filed against a proof of financial
8 responsibility filed with the commissioner under this section by
9 the commissioner and the licensee's or registrant's borrowers,
10 secondary mortgage loan applicants, and loan servicing customers.

11 (5) ~~(6)~~—Claims filed against a proof of financial
12 responsibility filed with the commissioner under this section by a
13 borrower or loan applicant shall involve only secondary mortgage
14 loans or secondary mortgage loan applications secured or to be
15 secured by real property used as a dwelling located in this state.
16 The amount of the claim shall not exceed actual fees in connection
17 with a loan application, overcharges of principal and interest, and
18 excess escrow collections by the licensee or registrant.

19 (6) ~~(7)~~—The commissioner may file a claim against a proof of
20 financial responsibility filed with the commissioner under this
21 section for payment of fines or fees due and payable to the
22 commissioner and reimbursement of expenses incurred in
23 investigating the licensee or registrant and expenses incurred in
24 distributing proceeds of the proof of financial responsibility. A
25 claim filed under this subsection shall be paid in full prior to
26 payment of other claims against a proof of financial
27 responsibility, unless the commissioner, in his or her discretion,

1 waives in whole or in part the right to priority of payment.

2 (7) ~~(8)~~—In the event that valid claims exceed the amount of a
3 proof of financial responsibility filed with the commissioner under
4 this section, each claimant shall be entitled only to a pro rata
5 amount of his or her valid claim.

6 (8) ~~(9)~~—A licensee that acts as a broker and that receives
7 funds from a prospective borrower before the closing of the
8 secondary mortgage loan shall maintain a net worth of not less than
9 \$25,000.00. A licensee that acts as a lender shall maintain a net
10 worth of not less than \$25,000.00. A licensee that acts as a
11 servicer shall maintain a net worth of not less than \$100,000.00.

12 (9) ~~(10)~~—Net worth under subsection ~~(9)~~—(8) is determined at
13 the conclusion of the fiscal year of the licensee immediately
14 preceding the date an application for a license, or renewal of a
15 license, is submitted to the commissioner. An applicant shall
16 disclose its net worth on a form prescribed by the commissioner or
17 on a form prepared or reviewed by a certified public accountant and
18 in accordance with generally accepted accounting principles. The
19 following assets are excluded in the computation of net worth:

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

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

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

1 through foreclosure.

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

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

8 (f) Organization costs.

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

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

22 (a) On a form prescribed by the commissioner.

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

26 (c) In a format prepared and certified by an independent
27 certified public accountant licensed by a regulatory authority of

1 any state or political subdivision of the United States.

2 (3) A registrant that is a licensee or registrant under the
3 mortgage brokers, lenders, and servicers licensing act, 1987 PA
4 173, MCL 445.1651 to 445.1684, and that timely files with the
5 commissioner the financial statement required under section 7 of
6 the mortgage brokers, lenders, and servicers licensing act, 1987 PA
7 173, MCL 445.1657, is exempt from the filing requirement of
8 subsection (2).

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

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

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

27 (a) For the investigation of an applicant for a license, a fee

1 of not less than \$400.00 or more than \$1,000.00.

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

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

15 (d) A licensee or registrant shall pay the actual travel,
16 lodging, and meal expenses incurred by employees of the office of
17 financial and insurance regulation who travel out of state to
18 examine or investigate the records of the licensee or registrant
19 and the cost of independent investigators employed under section
20 6b(3)(e).

21 ~~— (e) An annual fee from or on behalf of each secondary mortgage~~
22 ~~loan officer registrant in an amount established by the~~
23 ~~commissioner. For purposes of this subdivision, the commissioner~~
24 ~~shall establish an amount for the annual fee that is sufficient to~~
25 ~~defray the estimated cost of administering and enforcing the~~
26 ~~secondary mortgage loan officer registration provisions of this~~
27 ~~act. This subdivision does not apply to a secondary mortgage loan~~

1 ~~officer registrant described in section 2a(9).~~

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

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

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

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

14 (11) Money received from the fees described in this section
15 shall be deposited in the MBLSLA fund. As used in this subsection,
16 "MBLSLA fund" means the restricted account created under section
17 8(8) of the mortgage brokers, lenders, and servicers licensing act,
18 1987 PA 173, MCL 445.1658.

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

22 (13) On or before a date to be determined by the commissioner,
23 a licensee or registrant shall annually file with the commissioner
24 a report giving information, as required by the commissioner,
25 concerning the business and operations of the licensee or
26 registrant under this act during the immediately preceding calendar
27 year. In addition, the commissioner may require a licensee or

1 registrant to file special reports as the commissioner considers
2 reasonably necessary for the proper supervision of licensees or
3 registrants under this act. Reports required under this section
4 shall be in the form prescribed by the commissioner, signed, and
5 affirmed. A person who willfully and knowingly subscribes and
6 affirms a false statement in a report required under this
7 subsection is guilty of a felony, punishable by imprisonment for
8 not more than 15 years.

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

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

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

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

20 (c) Investigate complaints filed against licensees or
21 registrants.

22 (d) Advise the attorney general or the prosecuting attorney of
23 a county in which a broker, lender, or servicer is conducting
24 business ~~or in which a secondary mortgage loan officer resides that~~
25 the commissioner believes a licensee, registrant, ~~secondary~~
26 ~~mortgage loan officer registrant,~~ or other person is violating this
27 act. The attorney general or prosecuting attorney shall bring a

1 legal action to enjoin the operation of the business of the broker,
2 lender, or servicer ~~or the originating of secondary mortgages by~~
3 ~~the secondary mortgage loan officer or~~ prosecute violations of this
4 act.

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

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

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

14 (h) Assess a civil fine under section 27.

15 (i) Appoint a conservator under section 12a.

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

19 (k) Censure a licensee ~~, OR~~ registrant. ~~, or secondary~~
20 ~~mortgage loan officer registrant.~~

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

23 (a) Issue a subpoena under section 15.

24 (b) Administer oaths under section 15.

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

1 inquiry.

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

11 (i) To the attorney general.

12 (ii) To a regulatory agency.

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

15 (iv) To law enforcement officials.

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

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

21 Sec. 11. (1) ~~A-**THE COMMISSIONER SHALL GIVE** notice shall be~~
22 ~~given to a licensee, registrant, secondary mortgage loan officer~~
23 ~~registrant, or applicant of the commissioner's intention to enter~~
24 ~~an order to suspend or revoke a license ,**OR** registration ,~~or~~~~
25 ~~secondary mortgage loan officer registration or to refuse to issue~~
26 ~~a license ,**OR** registration. ,~~or secondary mortgage loan officer~~~~
27 ~~registration.~~The notice shall be in writing and served personally

1 or sent by certified mail to the licensee, registrant, ~~secondary~~
2 ~~mortgage loan officer registrant~~, or applicant.

3 (2) A licensee, registrant, ~~secondary mortgage loan officer~~
4 ~~registrant~~, or applicant may request a hearing to contest the
5 intention to enter an order or refusal under subsection (1) within
6 20 days after service of the notice. If a hearing regarding
7 suspension, revocation, or refusal to issue a license ~~—OR~~
8 registration ~~, or secondary mortgage loan officer registration is~~
9 not requested, the commissioner shall enter a final order regarding
10 the suspension, revocation, or refusal to issue a license ~~—OR~~
11 registration. ~~, or secondary mortgage loan officer registration.~~
12 The hearing shall be conducted ~~in accordance with~~ **UNDER** the
13 provisions of the administrative procedures act of 1969, 1969 PA
14 306, MCL 24.201 to 24.328. The commissioner may suspend, revoke, or
15 refuse to issue or renew a license ~~—OR~~ registration ~~, or secondary~~
16 ~~mortgage loan officer registration~~ if he or she finds that the
17 licensee ~~—OR~~ registrant ~~, or secondary mortgage loan officer~~
18 ~~registrant~~ or an owner, director, officer, member, partner,
19 stockholder, employee, or agent of a licensee ~~—OR~~ registrant ~~, or~~
20 ~~secondary mortgage loan officer registrant~~ has done any of the
21 following:

22 (a) Made a material misstatement in an application.

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

25 (c) Failed after 10 days' written notice of default, to pay an
26 annual operating fee, to maintain in effect a bond as required by
27 the commissioner, or to comply with a demand, ruling, or

1 requirement of the commissioner lawfully made under this act.

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

4 (3) The commissioner may suspend, revoke, or refuse to renew a
5 license ~~, OR registration, or secondary mortgage loan officer~~
6 ~~registration~~ upon a finding of a fact or condition ~~which~~ **THAT**, if
7 the fact or condition had existed at the time of the original
8 application for the license ~~, OR registration, or secondary~~
9 ~~mortgage loan officer registration~~, clearly would have warranted
10 the commissioner to refuse to issue the license ~~, OR registration, or~~
11 ~~secondary mortgage loan officer registration~~ originally.

12 (4) A licensee ~~, OR registrant, or secondary mortgage loan~~
13 ~~officer registrant~~ may surrender a license ~~, OR registration, or~~
14 ~~secondary mortgage loan officer registration~~ by delivering to the
15 commissioner the license ~~, OR registration, or secondary mortgage~~
16 ~~loan officer registration~~ with written notice that the licensee ~~, or~~
17 **OR** registrant ~~, or secondary mortgage loan officer registrant~~
18 surrenders the license ~~, OR registration, or secondary mortgage~~
19 ~~loan officer registration~~. The surrender, suspension, or revocation
20 of a license ~~, OR registration, or secondary mortgage loan officer~~
21 ~~registration~~ under this act shall not affect the licensee's ~~, OR~~
22 registrant's ~~, or secondary mortgage loan officer registrant's~~
23 civil or criminal liability for acts committed in violation of this
24 act. The surrender of a license ~~, OR registration, or secondary~~
25 ~~mortgage loan officer registration~~ does not affect a proceeding to
26 suspend or revoke a license ~~, OR registration, or secondary~~
27 ~~mortgage loan officer registration~~.

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

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

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

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

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

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

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

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

27 (i) The licensee.

1 (ii) The registrant.

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

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

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

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

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

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

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

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

1 Sec. 27. (1) In addition to the penalties provided by this
2 act, a violation of this act with respect to a particular secondary
3 mortgage loan transaction is also subject to the penalty and remedy
4 provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to
5 445.1864.

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

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

17 (b) Acts as a secondary mortgage loan officer in this state
18 ~~without a~~ **AND IS NOT A LICENSED** secondary mortgage loan officer
19 ~~registration required under this act~~ **THE MORTGAGE LOAN ORIGINATOR**
20 **LICENSING ACT.**

21 (c) Coerces or induces a real estate appraiser to inflate the
22 value of real property used as collateral for a secondary mortgage
23 loan, including, but not limited to, by doing any of the following:

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

1 property.

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

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

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

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

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

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

25 Enacting section 1. Sections 2a, 2b, 2c, 2d, and 26a of the
26 secondary mortgage loan act, 1981 PA 125, MCL 493.52a, 493.52b,
27 493.52c, 493.52d, and 493.76a, are repealed effective January 1,

1 2011.

2 Enacting section 2. This amendatory act takes effect January
3 1, 2011.

4 Enacting section 3. This amendatory act does not take effect
5 unless Senate Bill No. 462

6 of the 95th Legislature is enacted into law.