Act No. 252
Public Acts of 2006
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STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Reps. Huizenga, Lemmons, III, McConico and Tobocman

ENROLLED HOUSE BILL No. 5324

AN ACT to amend 1988 PA 161, entitled "An act to regulate the providing of certain consumer financial services; to provide for licensing of certain financial institutions; to prescribe powers and duties of certain state departments and agencies; to prohibit certain activities; and to provide for remedies and penalties," by amending sections 2, 5, 6, and 10g (MCL 487.2052, 487.2055, 487.2056, and 487.2060g), section 2 as amended and section 10g as added by 2002 PA 390 and sections 5 and 6 as amended by 1999 PA 275.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

(a) "Applicant" means a person that has applied to the commissioner to be licensed under this act.

(b) "Bureau" means the office of financial and insurance services of the department of labor and economic growth.

(c) "Business activity" means any activity regulated by any of the financial licensing acts.

(d) "Class I license" means a license issued under this act that authorizes the licensee to engage in all of the activities permitted under any of the financial licensing acts.

(e) "Class II license" means a license issued under this act that authorizes all of the activities permitted under a class I license except for activities permitted under the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, loan servicing activities under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(f) "Commissioner" means the commissioner of the office of financial and insurance services or an authorized representative of the commissioner.

(g) "Control person" means a director or executive officer of a licensee 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.

(h) "Depository financial institution" means a bank, savings and loan association, savings bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States, whose deposits are insured by an agency of the federal government.

(i) "Executive officer" means an officer, member, or partner of a licensee, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.

(j) "Financial licensing acts" means this act; the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24; the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81; the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141; 1984 PA 379, MCL 493.101 to 493.114; the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916; the money transmission services act, MCL 487.1001 to 487.1048; and the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(k) "Licensee" means a person that is licensed under this act.

(*l*) "Loan servicing activities" means the collection or remittance for a lender, noteowner, noteholder, or the licensee's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage servicing agreement or a mortgage loan subject to the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or a mortgage servicing agreement or secondary mortgage loan subject to the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or an agreement with the mortgagor.

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

Sec. 5. (1) An application for a license shall be accompanied by all of the following:

(a) An annual operating fee as established by the commissioner under section 11.

(b) An application fee as provided in section 11. The application fee is not refundable.

(c) Financial statements, reasonably satisfactory to the commissioner, showing that the applicant's net worth exceeds $100,000.00 for an applicant for a class I license; $50,000.00 for an applicant for a class II license; $1,000,000.00 for an applicant that intends to engage in business activity governed by 1984 PA 379, MCL 493.101 to 493.114; or $100,000.00 plus an additional $25,000.00 for each location or authorized delegate, as applicable, or $1,000,000.00, whichever is less, for an applicant that intends to provide money transmission services as defined in section 2 of the money transmission services act. A licensee shall have and continue to maintain the required net worth while engaging in the business activities authorized for licensing under this act. The commissioner may by order establish a higher net worth requirement for new class I licensees to assure safe and sound operation of the activities.

(2) Net worth under subsection (1)(c) shall be determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license is submitted to the commissioner or, for corporations not in existence as of the previous year end, the immediately preceding month end. Net worth shall be disclosed on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and shall be computed in accordance with generally accepted accounting principles. The following assets shall be 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) Receivables from officers or, in the case of a corporate applicant other than a publicly traded company, stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest, except that construction loan receivables secured by mortgages from related companies are not so excluded.

(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 investment.

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

(f) Organization costs.

Sec. 6. (1) An applicant for a license shall furnish a surety bond or letter of credit to secure its obligations under this act to the commissioner. Except as provided in this subsection, the principal amount of a surety bond or letter of credit shall be at least $500,000.00. If the applicant intends to provide money transmission services as defined in section 2 of the money transmission services act, the applicant shall file a surety bond that is in a principal amount as determined under section 13(5)(b) of the money transmission services act for a licensee under that act.

(2) A surety bond described in subsection (1) shall be payable to the commissioner for the benefit of the people of the state of Michigan for the use of, and may be sued on by, the state. A surety bond or letter of credit shall remain for the duration of the licensure period.

(3) A surety bond or letter of credit required under subsection (1) shall be in a form satisfactory to the commissioner and payable upon demand by the commissioner if he or she determines that the licensee is not conducting its activities as required by this act and all of the rules promulgated under this act, and has failed to pay all money that becomes due to a person who is an installment buyer under the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, Michigan residents who purchase checks under the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, Michigan residents who purchase money transmission services as defined in section 2 of the money transmission

services act, loan applicants, loan servicing customers, and borrowers under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and the commissioner.

(4) The commissioner shall prioritize and pay claims against a bond or letter of credit filed with the commissioner under this section in a manner that, in the commissioner's discretion, best protects the public interest.

(5) Claims described in subsection (4) may only be filed against a licensee's bond or letter of credit by the commissioner on behalf of the bureau and of individuals having claims and who are, as applicable, the licensee's loan applicants, loan servicing customers, and borrowers under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, Michigan residents who purchase checks under the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, Michigan residents who purchase money transmission services as defined in section 2 of the money transmission services act, or persons who are installment buyers under the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(6) Claims filed with the commissioner against a bond or letter of credit by a loan applicant, loan servicing customer, or borrower under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, shall involve, as applicable, only a mortgage loan, mortgage loan application, secondary mortgage loan, or secondary mortgage loan application 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 paid by the claimant to the licensee in connection with a loan application, overcharges of principal and interest, and excess escrow collections by the licensee.

(7) Before payment of any claim filed under this section, unless the commissioner waives, in whole or in part, the right to priority of payment, the commissioner shall be paid in full for fines and fees due to the bureau and for expenses incurred in investigating the licensee and in distributing the proceeds of the bond or letter of credit. In the event that valid claims exceed the amount of the bond or letter of credit, each claimant except the commissioner is entitled only to a pro rata amount of his or her valid claim.

Sec. 10g. (1) If in the opinion of the commissioner a person has engaged in fraud or money laundering, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee under this act or a licensee or registrant under a financial licensing act.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for loans, mortgage loans, secondary mortgage loans, credit card arrangements, or installment sales credit, borrowers on loans, obligors on installment sale contracts, loan servicing customers, purchasers of mortgage loans or interests in mortgage loans, or purchasers of money transmission services as defined in section 2 of the money transmission services act, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a crime involving fraud, dishonesty, money laundering, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or control person.

(10) As used in this section:

(a) "Fraud" includes actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(b) "Money laundering" means conduct by 1 or more persons that conceals the existence, illegal source, or illegal application of income and then disguises that income to make it appear legitimate. Money laundering includes, but is not limited to, conduct that violates any state or federal law that imposes a criminal penalty for money laundering.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5328 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved .....

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Governor