

**SUBSTITUTE FOR
SENATE BILL NO. 777**

A bill to amend 1987 PA 173, entitled
"Mortgage brokers, lenders, and servicers licensing act,"
by amending sections 1a, 11, and 22 (MCL 445.1651a, 445.1661, and
445.1672), sections 1a and 22 as amended by 1996 PA 210, and by
adding sections 18a, 18b, 18c, 18d, and 18e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1a. As used in this act, unless the context requires
2 otherwise:

3 (a) "Affiliate" means a person or group of persons that
4 directly or indirectly through 1 or more intermediaries controls,
5 is controlled by, or is under common control with another person
6 and engaged in a business or transaction regulated by this act.

7 (b) "Commissioner" means the commissioner of the ~~financial~~
8 ~~institutions bureau~~ OFFICE OF FINANCIAL AND INSURANCE SERVICES

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1 of the department of ~~commerce~~ CONSUMER AND INDUSTRY SERVICES or
2 his or her authorized agent.

3 (c) "Construction loan" means a mortgage loan for the pur-
4 pose of constructing a 1-to-4 family dwelling, which loan is
5 approved and closed ~~prior to~~ BEFORE completion of the construc-
6 tion of the improvement on the real property.

7 (D) "CONTROL PERSON" MEANS A DIRECTOR OR EXECUTIVE OFFICER
8 OF A LICENSEE OR A PERSON WHO HAS THE AUTHORITY TO PARTICIPATE IN
9 THE DIRECTION, DIRECTLY OR INDIRECTLY THROUGH 1 OR MORE OTHER
10 PERSONS, OF THE MANAGEMENT OR POLICIES OF A LICENSEE OR
11 REGISTRANT.

12 (E) ~~(d)~~ "Depository financial institution" means a state
13 or nationally chartered bank, ~~or~~ a state or federally chartered
14 savings and loan association, ~~or~~ savings bank, or ~~a state or~~
15 ~~federally chartered~~ credit union, or an entity of the federally
16 chartered farm credit system.

17 (F) "EXECUTIVE OFFICER" MEANS AN OFFICER, MEMBER, OR PARTNER
18 OF A LICENSEE OR REGISTRANT, INCLUDING CHIEF EXECUTIVE OFFICER,
19 PRESIDENT, VICE PRESIDENT, CHIEF FINANCIAL OFFICER, CONTROLLER,
20 COMPLIANCE OFFICER, OR ANY OTHER SIMILAR POSITION.

21 (G) "FINANCIAL LICENSING ACT" MEANS THE CONSUMER FINANCIAL
22 SERVICES ACT, 1988 PA 161, MCL 487.2051 TO 487.2072, AND ANY OF
23 THE ACTS LISTED IN SECTION 2 OF THE CONSUMER FINANCIAL SERVICES
24 ACT, 1988 PA 161, MCL 487.2052.

25 (H) ~~(e)~~ "Firm commitment" means an underwriting in which a
26 broker-dealer commits to buy the mortgage loan or the entire
27 issue of securities based upon or backed by 1 or more mortgage

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1 loans and assumes all financial responsibility for any unsold
2 securities.

3 (I) ~~-(f)-~~ "Individual investor" means a person residing in
4 this state or having its principal place of business in this
5 state, other than a bank, savings bank, savings and loan associa-
6 tion, credit union, trust company, insurance company, investment
7 company as defined in the investment company act of 1940, TITLE I
8 OF chapter 686, 54 STAT. 789, 15 U.S.C. 80a-1 to 80a-3 AND 80a-4
9 TO 80a-64, pension or profit sharing plan, the assets of which
10 are managed by a bank or trust company or other institutional
11 manager, financial institution, institutional manager,
12 broker-dealer that is a member of the New York stock exchange or
13 registered under the uniform securities act, ~~Act No. 265 of the~~
14 ~~Public Acts of 1964, being sections 451.501 to 451.818 of the~~
15 ~~Michigan Compiled Laws~~ 1964 PA 265, MCL 451.501 TO 451.818, the
16 federal national mortgage association, the government national
17 mortgage association, the federal home loan mortgage corporation,
18 or a mortgage lender or mortgage servicer.

19 (J) ~~-(g)-~~ "License" means a license issued under this act.

20 (K) ~~-(h)-~~ "Licensee" means a person licensed or required to
21 be licensed under this act.

22 (l) ~~-(i)-~~ "Mortgage broker" means a person who, directly or
23 indirectly, does 1 or both of the following:

24 (i) Serves or offers to serve as an agent for a person in an
25 attempt to obtain a mortgage loan.

26 (ii) Serves or offers to serve as an agent for a person who
27 makes or offers to make mortgage loans.

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1 (M) ~~-(j)-~~ "Mortgage lender" means a person who, directly or
2 indirectly, makes or offers to make mortgage loans.

3 (N) ~~-(k)-~~ "Mortgage loan" means a loan secured by a first
4 mortgage on real property located in this state and used, or
5 improved to be used, as a dwelling and designed for occupancy by
6 4 or fewer families or a land contract covering real property
7 located in this state used, or improved to be used, as a dwelling
8 and designed for occupancy by 4 or fewer families. A mortgage
9 loan does not include a home improvement installment contract
10 under the home improvement finance act, ~~Act No. 332 of the~~
11 ~~Public Acts of 1965, being sections 445.1101 to 445.1431 of the~~
12 ~~Michigan Compiled Laws~~ 1965 PA 332, MCL 445.1101 TO 445.1431.

13 (O) ~~-(l)-~~ "Mortgage servicer" means a person who, directly
14 or indirectly, services or offers to service mortgage loans.

15 (P) ~~-(m)-~~ "Person" means an individual, corporation, part-
16 nership, association, governmental entity, or any other legal
17 entity.

18 (Q) ~~-(n)-~~ "Real estate broker" means a broker or associate
19 broker licensed under article 25 of the occupational code, ~~Act~~
20 ~~No. 299 of the Public Acts of 1980, being sections 339.2501 to~~
21 ~~339.2518 of the Michigan Compiled Laws~~ 1980 PA 299, MCL 339.2501
22 TO 339.2518.

23 (R) ~~-(o)-~~ "Real estate salesperson" means a salesperson
24 licensed under article 25 of the occupational code, ~~Act No. 299~~
25 ~~of the Public Acts of 1980, being sections 339.2501 to 339.2518~~
26 ~~of the Michigan Compiled Laws~~ 1980 PA 299, MCL 339.2501 TO
27 339.2518.

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1 (S) ~~(P)~~ "Register" means filing a notice with the
2 commissioner on a form prescribed by the commissioner that noti-
3 fies the commissioner of the intent to engage in the activities
4 of a mortgage broker, mortgage lender, or mortgage servicer in
5 this state and the payment of any fees required under this act,
6 along with the other documents, proofs, and fees required by the
7 commissioner.

8 (T) ~~(Q)~~ "Registrant" means a person registered or required
9 to be registered under this act.

10 (U) ~~(R)~~ "Service" means the collection or remittance, or
11 the right or obligation to collect or remit, for a lender, noteo-
12 wner, noteholder, mortgage servicer, or the licensee's or
13 registrant's own account of 4 or more installment payments of the
14 principal, interest, or an amount placed in escrow under a mort-
15 gage loan, mortgage servicing agreement, or an agreement with the
16 mortgagor.

17 Sec. 11. (1) The commissioner shall exercise general super-
18 vision and control over mortgage brokers, mortgage lenders, and
19 mortgage servicers doing business in this state.

20 (2) In addition to the other powers granted to the commis-
21 sioner by this act, the commissioner shall have ALL OF the fol-
22 lowing powers:

23 (a) To promulgate reasonable rules ~~pursuant to~~ UNDER the
24 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
25 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
26 ~~Compiled Laws~~ 1969 PA 306, MCL 24.201 TO 24.328, as necessary to
27 implement and administer this act.

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1 (b) To deny an application for a license.

2 (c) To conduct examinations and investigations of any person
3 as necessary for the efficient enforcement of this act and the
4 rules promulgated under this act.

5 (d) To advise the attorney general or the prosecuting attor-
6 ney of the county in which the business is conducted that the
7 commissioner believes a licensee, registrant, or person is vio-
8 lating this act. ~~-, and the~~ THE attorney general or prosecuting
9 attorney ~~shall cause the~~ MAY TAKE appropriate legal action ~~to~~
10 ~~be taken~~ to enjoin the operation of the business or prosecute
11 violations of this act.

12 (e) To bring an action in the Ingham county circuit court in
13 the name and on behalf of ~~the~~ THIS state against the licensee,
14 registrant, or any other person who is participating in, or about
15 to participate in, any unsafe or injurious practice or act in
16 violation of this act or a rule promulgated under this act, to
17 enjoin the person from participating in or continuing ~~such~~ THE
18 practice or engaging in ~~such~~ THE act.

19 (f) To order a person to cease and desist from a violation
20 of this act or a rule promulgated under this act in accordance
21 with section 16.

22 (g) To suspend or revoke a license or registration in
23 accordance with section 29.

24 (h) To require that restitution be made in accordance with
25 section 29.

26 (i) To assess a civil fine in accordance with section 29.

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1 (j) To censure a licensee or registrant.

2 (K) TO ISSUE AN ORDER TO PROHIBIT A PERSON FROM BEING
3 EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF A LICENSEE OR REG-
4 ISTRANT AS PROVIDED UNDER SECTION 18A.

5 SEC. 18A. (1) IF IN THE OPINION OF THE COMMISSIONER A
6 PERSON HAS ENGAGED IN FRAUD, THE COMMISSIONER MAY SERVE UPON THAT
7 PERSON A WRITTEN NOTICE OF INTENTION TO PROHIBIT THAT PERSON FROM
8 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF A LICENSEE
9 OR REGISTRANT UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A
10 FINANCIAL LICENSING ACT. FOR PURPOSES OF THIS SECTION, "FRAUD"
11 SHALL INCLUDE ACTIONABLE FRAUD, ACTUAL OR CONSTRUCTIVE FRAUD,
12 CRIMINAL FRAUD, EXTRINSIC OR INTRINSIC FRAUD, FRAUD IN THE EXECU-
13 TION, IN THE INDUCEMENT, IN FACT, OR IN LAW, OR ANY OTHER FORM OF
14 FRAUD.

15 (2) A NOTICE ISSUED UNDER SUBSECTION (1) SHALL CONTAIN A
16 STATEMENT OF THE FACTS SUPPORTING THE PROHIBITION AND, EXCEPT AS
17 PROVIDED UNDER SUBSECTION (7), SET A HEARING TO BE HELD NOT MORE
18 THAN 60 DAYS AFTER THE DATE OF THE NOTICE. IF THE PERSON DOES
19 NOT APPEAR AT THE HEARING, HE OR SHE IS CONSIDERED TO HAVE CON-
20 SENTED TO THE ISSUANCE OF AN ORDER IN ACCORDANCE WITH THE
21 NOTICE.

22 (3) IF AFTER A HEARING HELD UNDER SUBSECTION (2) THE COMMIS-
23 SIONER FINDS THAT ANY OF THE GROUNDS SPECIFIED IN THE NOTICE HAVE
24 BEEN ESTABLISHED, THE COMMISSIONER MAY ISSUE AN ORDER OF SUSPEN-
25 SION OR PROHIBITION FROM BEING A LICENSEE OR REGISTRANT OR FROM
26 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY LICENSEE

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1 OR REGISTRANT UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A
2 FINANCIAL LICENSING ACT.

3 (4) AN ORDER ISSUED UNDER SUBSECTION (2) OR (3) IS EFFECTIVE
4 UPON SERVICE UPON THE PERSON. THE COMMISSIONER SHALL ALSO SERVE
5 A COPY OF THE ORDER UPON THE LICENSEE OR REGISTRANT OF WHICH THE
6 PERSON IS AN EMPLOYEE, AGENT, OR CONTROL PERSON. THE ORDER
7 REMAINS IN EFFECT UNTIL IT IS STAYED, MODIFIED, TERMINATED, OR
8 SET ASIDE BY THE COMMISSIONER OR A REVIEWING COURT.

9 (5) AFTER 5 YEARS FROM THE DATE OF AN ORDER ISSUED UNDER
10 SUBSECTION (2) OR (3), THE PERSON SUBJECT TO THE ORDER MAY APPLY
11 TO THE COMMISSIONER TO TERMINATE THE ORDER.

12 (6) IF THE COMMISSIONER CONSIDERS THAT A PERSON SERVED A
13 NOTICE UNDER SUBSECTION (1) POSES AN IMMINENT THREAT OF FINANCIAL
14 LOSS TO APPLICANTS FOR MORTGAGE LOANS, THE COMMISSIONER MAY SERVE
15 UPON THE PERSON AN ORDER OF SUSPENSION FROM BEING EMPLOYED BY, AN
16 AGENT OF, OR CONTROL PERSON OF ANY LICENSEE OR REGISTRANT. THE
17 SUSPENSION IS EFFECTIVE ON THE DATE THE ORDER IS ISSUED AND,
18 UNLESS STAYED BY A COURT, REMAINS IN EFFECT PENDING THE COMPLE-
19 TION OF A REVIEW AS PROVIDED UNDER THIS SECTION AND THE COMMIS-
20 SIONER HAS DISMISSED THE CHARGES SPECIFIED IN THE ORDER.

21 (7) UNLESS OTHERWISE AGREED TO BY THE COMMISSIONER AND THE
22 PERSON SERVED WITH AN ORDER ISSUED UNDER SUBSECTION (6), THE
23 HEARING REQUIRED UNDER SUBSECTION (2) TO REVIEW THE SUSPENSION
24 SHALL BE HELD NOT EARLIER THAN 5 DAYS OR LATER THAN 20 DAYS AFTER
25 THE DATE OF THE NOTICE.

26 (8) IF A PERSON IS CONVICTED OF A FELONY INVOLVING FRAUD,
27 DISHONESTY, OR BREACH OF TRUST, THE COMMISSIONER MAY ISSUE AN

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1 ORDER SUSPENDING OR PROHIBITING THAT PERSON FROM BEING A LICENSEE
2 OR REGISTRANT AND FROM BEING EMPLOYED BY, AN AGENT OF, OR CONTROL
3 PERSON OF ANY LICENSEE OR REGISTRANT UNDER THIS ACT OR A LICENSEE
4 OR REGISTRANT UNDER A FINANCIAL LICENSING ACT. AFTER 5 YEARS
5 FROM THE DATE OF THE ORDER, THE PERSON SUBJECT TO THE ORDER MAY
6 APPLY TO THE COMMISSIONER TO TERMINATE THE ORDER.

7 (9) THE COMMISSIONER SHALL MAIL A COPY OF ANY NOTICE OR
8 ORDER ISSUED UNDER THIS SECTION TO THE LICENSEE OR REGISTRANT OF
9 WHICH THE PERSON SUBJECT TO THE NOTICE OR ORDER IS AN EMPLOYEE,
10 AGENT, OR CONTROL PERSON.

11 SEC. 18B. (1) A HEARING UNDER SECTION 16 OR 18A SHALL BE
12 CONDUCTED UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969
13 PA 306, MCL 24.201 TO 24.328. WITHIN 30 DAYS AFTER THE COMMIS-
14 SIONER HAS NOTIFIED THE PARTIES THAT THE CASE HAS BEEN SUBMITTED
15 TO HIM OR HER FOR FINAL DECISION, THE COMMISSIONER SHALL RENDER A
16 DECISION THAT SHALL INCLUDE FINDINGS OF FACT SUPPORTING THE DECI-
17 SION AND SERVE UPON EACH PARTY TO THE PROCEEDING A COPY OF THE
18 DECISION AND AN ORDER CONSISTENT WITH THE DECISION.

19 (2) EXCEPT FOR A CONSENT ORDER, A PARTY TO THE PROCEEDING,
20 OR A PERSON AFFECTED BY AN ORDER ISSUED UNDER SECTION 16 OR 18A
21 MAY OBTAIN A JUDICIAL REVIEW OF THE ORDER. A CONSENT ORDER MAY
22 BE REVIEWED AS PROVIDED UNDER THE ADMINISTRATIVE PROCEDURES ACT
23 OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. EXCEPT FOR AN ORDER
24 UNDER JUDICIAL REVIEW, THE COMMISSIONER MAY TERMINATE OR SET
25 ASIDE ANY ORDER. THE COMMISSIONER MAY TERMINATE OR SET ASIDE AN
26 ORDER UNDER JUDICIAL REVIEW WITH THE PERMISSION OF THE COURT.

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1 (3) UNLESS ORDERED BY THE COURT, THE COMMENCEMENT OF
2 PROCEEDINGS FOR JUDICIAL REVIEW UNDER SUBSECTION (2) DOES NOT
3 STAY THE COMMISSIONER'S ORDER.

4 SEC. 18C. THE COMMISSIONER MAY APPLY TO THE CIRCUIT COURT
5 OF INGHAM COUNTY FOR THE ENFORCEMENT OF ANY OUTSTANDING ORDER
6 ISSUED UNDER SECTION 15, 16, OR 18A.

7 SEC. 18D. ANY CURRENT OR FORMER EXECUTIVE OFFICER, DIREC-
8 TOR, AGENT, OR CONTROL PERSON WHO VIOLATES A FINAL ORDER ISSUED
9 UNDER SECTION 18A IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE
10 OF NOT MORE THAN \$5,000.00 OR IMPRISONMENT FOR NOT MORE THAN 1
11 YEAR, OR BOTH.

12 SEC. 18E. A CONTROL PERSON WHO IS SUBJECT TO AN ORDER
13 ISSUED UNDER SECTION 18A AND WHO MEETS ALL OF THE FOLLOWING
14 REQUIREMENTS IS NOT IN VIOLATION OF THE ORDER:

15 (A) THE CONTROL PERSON SHALL NOT IN ANY MANNER, DIRECTLY OR
16 INDIRECTLY, PARTICIPATE IN THE CONTROL OF A LICENSEE OR REGIS-
17 TRANT AFTER THE DATE THE ORDER IS ISSUED.

18 (B) THE CONTROL PERSON SHALL WITHIN 6 MONTHS AFTER THE DATE
19 THE ORDER IS FINAL TRANSFER ANY INTEREST THE CONTROL PERSON OWNS
20 IN A LICENSEE OR REGISTRANT TO AN UNRELATED THIRD PARTY.

21 Sec. 22. It ~~shall be~~ IS a violation of this act ~~if~~ FOR
22 a licensee or registrant TO DO ANY OF THE FOLLOWING:

23 (a) ~~Does not~~ FAIL TO conduct the business in accordance
24 with law, ~~or has violated any other provision of~~ this act, or a
25 rule promulgated or order issued under this act.

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1 (b) ~~Engages~~ ENGAGE in fraud, deceit, or material
2 misrepresentation in connection with any transaction governed by
3 this act.

4 (c) Intentionally or due to gross or wanton negligence,
5 repeatedly ~~fails~~ FAIL to provide borrowers material disclosures
6 of information as required by ~~state or federal~~ law.

7 (d) ~~Suppresses or withholds~~ SUPPRESS OR WITHHOLD from the
8 commissioner any information that the licensee or registrant pos-
9 sesses and that, if submitted, would have made the licensee or
10 registrant ineligible for licensing or registration under this
11 act or would have warranted the commissioner's denial of a
12 license application or refusal to accept a registration.

13 (e) ~~Violates any provision of Act No. 125 of the Public~~
14 ~~Acts of 1966, being sections 565.161 to 565.163 of the Michigan~~
15 ~~Compiled Laws~~ FAIL TO COMPLY WITH 1966 PA 125, MCL 565.161 TO
16 565.164, regulating the handling of mortgage escrow accounts by
17 mortgagees.

18 (f) Until proper disbursement is made, ~~fails~~ FAIL to place
19 in a trust or escrow account held by a federally insured deposi-
20 tory financial institution in a manner approved by the commis-
21 sioner any money, funds, deposits, checks, drafts, or other nego-
22 tiable instruments received by ~~a mortgage broker, mortgage~~
23 ~~lender, or mortgage servicer that is the portion of a payment on~~
24 ~~a mortgage loan that the person~~ THE LICENSEE THAT THE BORROWER
25 is obligated to pay to a third party, including amounts paid to
26 the holder of the mortgage loan, amounts for property taxes and
27 insurance premiums, or amounts paid under an agreement that

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1 requires if the mortgage loan is not closed the amounts paid
2 shall be refunded to the prospective borrower or if the mortgage
3 loan is closed the amounts paid shall be applied to fees and
4 costs incurred at the time the mortgage loan is closed. Fees and
5 costs include, but are not limited to, title insurance premiums
6 and recording fees. Fees and costs do not include amounts paid
7 to cover costs incurred to process the mortgage loan application,
8 to obtain an appraisal, or to receive a credit report.

9 (g) ~~Refuses~~ REFUSE to permit an examination or investiga-
10 tion by the commissioner of the books and affairs of the licensee
11 or registrant, or has refused or failed, within a reasonable
12 time, to furnish any information or make any report that may be
13 required by the commissioner ~~pursuant to~~ UNDER this act.

14 (h) ~~Is~~ TO BE convicted of a felony, or any misdemeanor of
15 which an essential element is fraud.

16 (i) ~~Refuses or fails~~ REFUSE OR FAIL to pay, within a rea-
17 sonable time, those expenses assessed to the licensee or regis-
18 trant ~~pursuant to~~ UNDER this act.

19 (j) ~~Fails~~ FAIL to make restitution after having been
20 ordered to do so by the commissioner or an administrative agency,
21 or ~~fails~~ FAIL to make restitution or pay damages to persons
22 injured by the licensee's or registrant's business transactions
23 after having been ordered to do so by a court.

24 (k) ~~Fails~~ FAIL to make a mortgage loan ~~pursuant to, and~~
25 in accordance with ~~,~~ a written commitment to make a mortgage
26 loan issued to, and accepted by, a person when the person has

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1 timely and completely satisfied all the conditions of the
2 commitment ~~prior to~~ BEFORE the expiration of the commitment.

3 (l) ~~Requires~~ REQUIRE a prospective borrower to deal exclu-
4 sively with the licensee or registrant in regard to a mortgage
5 loan application.

6 (m) ~~Takes~~ TAKE a security interest in real property before
7 closing the mortgage loan to secure payment of fees assessed in
8 connection with a mortgage loan application.

9 (N) EXCEPT AS PROVIDED UNDER SECTION 18E, KNOWINGLY PERMIT A
10 PERSON TO VIOLATE AN ORDER THAT HAS BEEN ISSUED UNDER THIS ACT OR
11 ANY OTHER FINANCIAL LICENSING ACT THAT PROHIBITS THAT PERSON FROM
12 BEING EMPLOYED BY, AN AGENT OF, OR A CONTROL PERSON OF THE
13 LICENSEE OR REGISTRANT.