

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4596

A bill to amend 1987 PA 173, entitled
"Mortgage brokers, lenders, and servicers licensing act,"
by amending sections 6, 7, 8, and 25 (MCL 445.1656, 445.1657,
445.1658, and 445.1675), sections 6, 7, and 8 as amended by 1996 PA
210 and section 25 as amended by 1998 PA 371.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) The following shall register with the commissioner
2 on a form prescribed by the commissioner:

3 (a) A mortgage broker, mortgage lender, or mortgage servicer
4 approved as a seller or servicer by the federal national mortgage
5 association or the federal home loan mortgage corporation.

6 (b) A mortgage broker, mortgage lender, or mortgage servicer
7 approved as an issuer or servicer by the government national
8 mortgage association.

1 (c) A real estate broker or real estate salesperson licensed
2 under article 25 of the occupational code, ~~Act No. 299 of the~~
3 ~~Public Acts of 1980, being sections 339.2501 to 339.2518 of the~~
4 ~~Michigan Compiled Laws 1980 PA 299, MCL 339.2501 TO 339.2518~~, who
5 acts as a mortgage broker for not more than 1 licensee or 1
6 registrant, or who acts as a mortgage broker, mortgage lender, or
7 mortgage servicer only in connection with real estate sales in
8 which the real estate broker or salesperson affiliated with the
9 real estate broker is engaged and who receives for ~~such~~ **THOSE**
10 services additional compensation beyond the customary commission on
11 real estate sales.

12 (d) A mortgage broker, mortgage lender, or mortgage servicer
13 ~~which~~ **THAT** is a subsidiary or affiliate of a depository financial
14 institution or a depository financial institution holding company
15 if the depository institution does not maintain a main office or a
16 branch office in this state.

17 (2) A registrant is not required to comply with section 3, 4,
18 or 5 and is not subject to annual examination by the commissioner.

19 (3) A mortgage broker, mortgage lender, or a mortgage servicer
20 ~~which~~ **THAT** is a subsidiary or affiliate of a depository financial
21 institution or a subsidiary or affiliate of a holding company of a
22 depository financial institution ~~shall~~ **IS** not ~~be~~ subject to section
23 29(1)(b) or (c).

24 (4) Notwithstanding section 25(m), a mortgage broker, mortgage
25 lender, or a mortgage servicer ~~which~~ **THAT** is a subsidiary or
26 affiliate of a depository financial institution or a subsidiary or
27 affiliate of a holding company of a depository financial

1 institution may register and become subject to the provisions of
2 the act applicable to registrants.

3 (5) If a real estate broker or real estate salesperson acts as
4 a mortgage broker, mortgage lender, or mortgage servicer not in
5 connection with real estate sales in which the real estate broker
6 or real estate salesperson affiliated with the real estate broker
7 is engaged, the real estate broker or real estate salesperson shall
8 be licensed or registered as otherwise required under this act.

9 (6) A real estate broker or real estate salesperson, in
10 connection with real estate sales in which the real estate broker
11 or real estate salesperson affiliated with the real estate broker
12 is engaged, who acts as a mortgage broker on 10 or fewer mortgage
13 loans in any 12-month period from ~~July~~ **JANUARY** 1 to ~~June 30~~
14 **DECEMBER 31** and who receives for such services additional
15 compensation beyond the customary commission on real estate sales
16 shall be exempt from the registration or licensing requirements of
17 this act for that 12-month period. If the broker and all real
18 estate salespersons affiliated with the broker in aggregate
19 brokered more than 30 mortgage loans as described in this
20 subsection in the same 12-month period from ~~July~~ **JANUARY** 1 to ~~June~~
21 ~~30~~ **DECEMBER 31**, then ~~such~~ **THAT** broker shall obtain a license or
22 shall register as required by this act.

23 (7) A registration accepted by the commissioner under this
24 section does not approve the use of or indemnify the registrant
25 against claims for the improper use of the business name stated in
26 the registration.

27 Sec. 7. (1) A registration or license, unless it is renewed,

1 shall expire ~~June 30~~ **DECEMBER 31** of each year. A registration or
 2 license may be renewed by filing a registration or an application
 3 for license renewal and paying the annual operating fee for the
 4 succeeding year. The registration or application and payment shall
 5 be received by the commissioner on, or before, ~~June 15 of each year~~
 6 **A DATE PRESCRIBED BY THE COMMISSIONER.**

7 (2) Not later than 90 days after the close of the fiscal year
 8 of a licensee or registrant, the licensee or registrant shall
 9 annually deliver to the commissioner a financial statement for the
 10 fiscal year prepared from the licensee's or registrant's books and
 11 records. At the licensee's or registrant's option, the financial
 12 statement may be any of the following:

13 (a) A form prescribed by the commissioner.

14 (b) A report substantially similar to the form prescribed by
 15 the commissioner, which ~~report~~ the licensee or registrant
 16 ~~represents~~ **MUST REPRESENT** to the commissioner to be true and
 17 complete.

18 (c) In a format prepared and certified by an independent
 19 certified public accountant licensed by a regulatory authority of
 20 any state or political subdivision of the United States.

21 Sec. 8. (1) At the time of making an initial application for a
 22 license under this act, and at the time of making the first
 23 application for a license after the suspension or revocation of a
 24 license, ~~the~~ **AN** applicant **FOR LICENSURE UNDER THIS ACT** shall pay to
 25 the commissioner a fee for investigating the applicant and the
 26 minimum annual operating fee established by the commissioner ~~under~~
 27 **IN** subsection (3). To renew a license that ~~has not been~~ **IS NOT**

1 suspended or revoked, the applicant shall only pay to the
2 commissioner the annual operating fee **ESTABLISHED IN SUBSECTION**
3 **(3)**. At the time of filing a registration or a renewal of a
4 registration, a registrant shall pay to the commissioner an annual
5 operating fee ~~as provided by~~ **ESTABLISHED IN** subsection (3).

6 (2) If ~~the~~ **AN** initial or renewed license or registration ~~as~~
7 ~~provided~~ **DESCRIBED** in subsection (1) ~~would~~ **WILL** have an effective
8 date within 6 months of the expiration date ~~provided for~~ **DESCRIBED**
9 in section 7, the initial or renewal annual operating fee for that
10 license or registration ~~shall be~~ **IS** 1/2 of the annual operating
11 fee.

12 (3) The commissioner shall annually establish ~~the~~ **A** schedule
13 of fees **THAT ARE** sufficient to pay, but not to exceed, the ~~bureau's~~
14 **OFFICE OF FINANCIAL AND INSURANCE REGULATION'S** reasonably
15 anticipated costs of administering **AND ENFORCING** this act. ~~The~~
16 **SUBJECT TO SUBSECTION (2), THE** fees are as follows:

17 (a) For the investigation of an applicant for a license, **A FEE**
18 **OF** not less than \$400.00 or more than \$1,000.00.

19 (b) Except as set forth in subdivision (c), a licensee or
20 registrant annually shall pay an operating fee based upon the
21 number of closed mortgage loans the licensee or registrant brokered
22 to other parties, the number of mortgage loans closed by the
23 licensee or registrant during the previous calendar year, and the
24 dollar volume of loans serviced by the licensee or registrant as of
25 December 31 of the previous calendar year. ~~The~~ **IN THE 1-YEAR PERIOD**
26 **BEGINNING JULY 2, 1996, THE** operating fee ~~during the first year~~
27 ~~after enactment of this amendatory language~~ shall be not less than

1 \$250.00 and not more than \$2,500.00. ~~Thereafter~~ **BEGINNING JULY 2,**
 2 **1997,** in the discretion of the commissioner, subject to the
 3 limitation set forth in this subsection, the **COMMISSIONER MAY**
 4 **INCREASE THE** maximum operating fee ~~may be increased~~ at an annual
 5 rate of not more than 10% in the second, third, and fourth ~~years~~
 6 ~~following enactment~~ **1-YEAR PERIODS AFTER THE 1-YEAR PERIOD**
 7 **BEGINNING JULY 2, 1996,** and in the fifth and subsequent years, at
 8 an annual rate of not more than the annual increase for the
 9 immediately preceding 12-month period in the Detroit consumer price
 10 index as reported by the United States department of labor. For
 11 purposes of this subdivision, "mortgage loan" includes only
 12 mortgage loans subject to this act.

13 (c) For amending or reissuing a license, ~~or~~ registration, **OR**
 14 **LOAN OFFICER REGISTRATION, A FEE OF** not less than ~~\$50.00~~ **\$15.00** or
 15 more than \$200.00.

16 (d) A licensee or registrant shall pay the actual travel,
 17 lodging, and meal expenses incurred by ~~bureau~~ employees **OF THE**
 18 **OFFICE OF FINANCIAL AND INSURANCE REGULATION** who travel out of
 19 state to examine the records of the licensee or investigate the
 20 licensee or registrant and the cost of independent investigators
 21 employed under section 20(1)(e).

22 (E) **A LOAN OFFICER REGISTRANT SHALL PAY AN ANNUAL FEE**
 23 **ESTABLISHED BY THE COMMISSIONER. FOR PURPOSES OF THIS SUBDIVISION,**
 24 **THE COMMISSIONER SHALL ESTABLISH AN AMOUNT FOR THE ANNUAL FEE THAT**
 25 **IS SUFFICIENT TO DEFRAY THE ESTIMATED COST OF ADMINISTERING AND**
 26 **ENFORCING THE LOAN OFFICER REGISTRATION PROVISIONS OF THIS ACT.**

27 (4) Fees received ~~pursuant to~~ **UNDER** this act are not

1 refundable.

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

6 (6) A licensee or registrant who fails to submit to the
7 commissioner a report required ~~by~~ **UNDER** section 7 or section 21 is
8 subject to a penalty of \$25.00 for each day the report is
9 delinquent or \$1,000.00, whichever is less.

10 (7) A licensee or registrant whose license or registration
11 renewal fee is not received on or before ~~June 30~~ **DECEMBER 31** is
12 subject to a penalty of \$25.00 for each day the fee is delinquent
13 or \$1,000.00, whichever is less.

14 ~~(8) Money received under this act shall be deposited in the~~
15 ~~state treasury and credited to the financial institutions bureau to~~
16 ~~be used only for the operation of the financial institutions~~
17 ~~bureau.~~ **THE DEPARTMENT OF TREASURY SHALL ESTABLISH AND ADMINISTER A**
18 **RESTRICTED ACCOUNT IN THE GENERAL FUND NAMED THE MBLSLA FUND. THE**
19 **DEPARTMENT OF TREASURY SHALL CREDIT TO THE ACCOUNT ALL FEES**
20 **COLLECTED UNDER THIS ACT OR UNDER THE COMMISSIONER'S AUTHORITY**
21 **UNDER THIS ACT AND MONEY APPROPRIATED OR RECEIVED FROM ANY SOURCE.**
22 **THE DEPARTMENT OF TREASURY SHALL USE THE MONEY IN THE ACCOUNT ONLY**
23 **TO PROVIDE MONEY TO THE COMMISSIONER, TO ADMINISTER AND ENFORCE**
24 **THIS ACT AND OTHER COSTS ASSOCIATED WITH THE COMMISSIONER'S**
25 **REGULATORY OBLIGATIONS. MONEY IN THE ACCOUNT AT THE END OF A STATE**
26 **FISCAL YEAR SHALL NOT REVERT TO THE GENERAL FUND BUT SHALL BE**
27 **CARRIED OVER IN THE ACCOUNT TO THE NEXT STATE FISCAL YEAR.**

1 (9) The annual operating fee set by the commissioner under
2 subsection (3)(b) shall be based upon information in reports filed
3 under section 21.

4 Sec. 25. This act does not apply to any of the following:

5 (a) A depository financial institution whether or not the
6 depository financial institution is acting in a capacity of a
7 trustee or fiduciary.

8 (b) A salesperson acting as an agent for a residential builder
9 or residential maintenance and alteration contractor, or a
10 residential builder or residential maintenance and alteration
11 contractor licensed under article 24 of the occupational code, 1980
12 PA 299, MCL 339.2401 to 339.2412, ~~when~~ **IF** a mortgage is made or
13 negotiated in connection with the sale or financing of a
14 residential structure or improvement constructed or improved by
15 that residential builder or residential maintenance and alteration
16 contractor.

17 (c) A real estate broker or real estate salesperson who is not
18 a mortgage broker, mortgage lender, or mortgage servicer, or who
19 only acts as a mortgage broker in connection with a real estate
20 sale or lease and acts without additional compensation beyond the
21 customary commission on the sales or leases.

22 (d) A real estate salesperson who acts for a real estate
23 broker as a mortgage broker, mortgage lender, or mortgage servicer
24 and who receives for the services compensation only from the real
25 estate broker for which the salesperson is an agent or employee.

26 (e) A person licensed under the secondary mortgage loan act,
27 1981 PA 125, MCL 493.51 to 493.81, not making, brokering, or

1 servicing mortgage loans as described in this act in a 12-month
2 period from ~~July~~ **JANUARY** 1 to ~~June 30~~ **DECEMBER 31**.

3 (f) Agencies or corporate instrumentalities of the United
4 States and of this state and its political subdivisions, including
5 the public employees' retirement system.

6 (g) A mortgage lender that in the aggregate with any
7 affiliates makes 10 or fewer mortgage loans in a 12-month period
8 from ~~July~~ **JANUARY** 1 to ~~June 30~~ **DECEMBER 31**.

9 (h) A mortgage servicer that in the aggregate with any
10 affiliates services 10 or fewer mortgage loans in a 12-month period
11 from ~~July~~ **JANUARY** 1 to ~~June 30~~ **DECEMBER 31**.

12 (i) A mortgage servicer that in the aggregate with any
13 affiliates services only 75 or fewer land contracts, of which 10 or
14 fewer require the collection of money for the payment of taxes or
15 insurance. This subdivision and subdivision (h) do not exempt a
16 mortgage servicer who collects money for the payment of taxes or
17 insurance from the provisions of 1966 PA 125, MCL 565.161 to
18 565.164. All fees shall be returned to any mortgage servicer
19 described in this subdivision who applied for a license and paid
20 the fees required by this act and who on December 27, 1988 is
21 exempted from licensing.

22 (j) An individual licensed to practice law in this state and
23 not engaged in the business of negotiating loans secured by real
24 property, ~~when~~ **IF** the individual renders services in the course of
25 his or her practice as an attorney-at-law.

26 (k) A person who makes mortgage loans exclusively for the
27 benefit of employees of that person if the proceeds of the loan are

1 used to assist the employee in meeting his or her housing needs.

2 (l) A person acting as a fiduciary with respect to any employee
3 pension benefit plan qualified under the internal revenue code who
4 makes mortgage loans solely to plan participants from plan assets.

5 (m) A mortgage broker, mortgage lender, or a mortgage servicer
6 ~~which~~**THAT** is a subsidiary or affiliate of a depository financial
7 institution or a subsidiary or affiliate of a holding company of a
8 depository financial institution, ~~which~~**IF THE** depository financial
9 institution maintains its main office or a branch office in this
10 state.

11 (n) A nonprofit corporation that makes, brokers, or services
12 mortgage loans in connection with a neighborhood housing program
13 assisted under the neighborhood reinvestment corporation act, ~~title~~
14 ~~VI of Public Law 95-557, 42 U.S.C.~~**USC** 8101 to 8107.

15 (o) A person determined by the commissioner to meet the
16 qualifications established under section 25a.

17 Enacting section 1. This amendatory act takes effect January
18 1, 2009.