

Act No. 72
Public Acts of 2008
Approved by the Governor
April 2, 2008
Filed with the Secretary of State
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EFFECTIVE DATE: January 1, 2009

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Jackson, Accavitti, Ball, Bauer, Bieda, Brandenburg, Brown, Clack, Corriveau, Coulouris, Cushingberry, Dillon, Espinoza, Gonzales, Hammel, Hammon, Hopgood, Johnson, Robert Jones, David Law, Kathleen Law, LeBlanc, Leland, Lemmons, Marleau, Meadows, Melton, Moolenaar, Pastor, Rocca, Sak, Scott, Sheltroun, Alma Smith, Spade, Tobocman, Valentine, Ward, Warren, Wojno and Young

ENROLLED HOUSE BILL No. 4596

AN ACT to amend 1987 PA 173, entitled "An act to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of the financial institutions bureau and certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties," 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:

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

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

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

(c) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, who acts as a mortgage broker for not more than 1 licensee or 1 registrant, or who acts as a mortgage broker, mortgage lender, or mortgage servicer only in connection with real estate sales in which the real estate broker or salesperson affiliated with the real estate broker is engaged and who receives for those services additional compensation beyond the customary commission on real estate sales.

(d) A mortgage broker, mortgage lender, or mortgage servicer that is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company if the depository institution does not maintain a main office or a branch office in this state.

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

(3) A mortgage broker, mortgage lender, or a mortgage servicer that is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution is not subject to section 29(1)(b) or (c).

(4) Notwithstanding section 25(m), a mortgage broker, mortgage lender, or a mortgage servicer that is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution may register and become subject to the provisions of the act applicable to registrants.

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

(6) A real estate broker or real estate salesperson, in connection with real estate sales in which the real estate broker or real estate salesperson affiliated with the real estate broker is engaged, who acts as a mortgage broker on 10 or fewer mortgage loans in any 12-month period from January 1 to December 31 and who receives for such services additional compensation beyond the customary commission on real estate sales shall be exempt from the registration or licensing requirements of this act for that 12-month period. If the broker and all real estate salespersons affiliated with the broker in aggregate brokered more than 30 mortgage loans as described in this subsection in the same 12-month period from January 1 to December 31, then that broker shall obtain a license or shall register as required by this act.

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

Sec. 7. (1) A registration or license, unless it is renewed, shall expire December 31 of each year. A registration or license may be renewed by filing a registration or an application for license renewal and paying the annual operating fee for the succeeding year. The registration or application and payment shall be received by the commissioner on, or before, a date prescribed by the commissioner.

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

(a) A form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which the licensee or registrant must represent to the commissioner to be true and complete.

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

Sec. 8. (1) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, an applicant for licensure under this act shall pay to the commissioner a fee for investigating the applicant and the minimum annual operating fee established by the commissioner in subsection (3). To renew a license that is not suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee established in subsection (3). At the time of filing a registration or a renewal of a registration, a registrant shall pay to the commissioner an annual operating fee established in subsection (3).

(2) If an initial or renewed license or registration described in subsection (1) will have an effective date within 6 months of the expiration date described in section 7, the initial or renewal annual operating fee for that license or registration is 1/2 of the annual operating fee.

(3) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the office of financial and insurance regulation's reasonably anticipated costs of administering and enforcing this act. Subject to subsection (2), the fees are as follows:

(a) For the investigation of an applicant for a license, a fee of not less than \$400.00 or more than \$1,000.00.

(b) Except as set forth in subdivision (c), a licensee or registrant annually shall pay an operating fee based upon the number of closed mortgage loans the licensee or registrant brokered to other parties, the number of mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of loans serviced by the licensee or registrant as of December 31 of the previous calendar year. In the 1-year period beginning July 2, 1996, the operating fee shall be not less than \$250.00 and not more than \$2,500.00. Beginning July 2, 1997, in the discretion of the commissioner, subject to the limitation set forth in this subsection, the commissioner may increase the maximum operating fee at an annual rate of not more than 10% in the second, third, and fourth 1-year periods after the 1-year period beginning July 2, 1996, and in the fifth and subsequent years, at an annual rate of not more than the annual increase for the immediately preceding 12-month period in the Detroit consumer price index as reported by the United States department of labor. For purposes of this subdivision, "mortgage loan" includes only mortgage loans subject to this act.

(c) For amending or reissuing a license, registration, or loan officer registration, a fee of not less than \$15.00 or more than \$200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to examine the records of the licensee or investigate the licensee or registrant and the cost of independent investigators employed under section 20(1)(e).

(e) A loan officer registrant shall pay an annual fee established by the commissioner. For purposes of this subdivision, the commissioner shall establish an amount for the annual fee that is sufficient to defray the estimated cost of administering and enforcing the loan officer registration provisions of this act.

(4) Fees received under this act are not refundable.

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

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

(7) A licensee or registrant whose license or registration renewal fee is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(8) The department of treasury shall establish and administer a restricted account in the general fund named the MBLSLA fund. The department of treasury shall credit to the account all fees collected under this act or under the commissioner's authority under this act and money appropriated or received from any source. The department of treasury shall use the money in the account only to provide money to the commissioner, to administer and enforce this act and other costs associated with the commissioner's regulatory obligations. Money in the account at the end of a state fiscal year shall not revert to the general fund but shall be carried over in the account to the next state fiscal year.

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

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

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

(b) A salesperson acting as an agent for a residential builder or residential maintenance and alteration contractor, or a residential builder or residential maintenance and alteration contractor licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, if a mortgage is made or negotiated in connection with the sale or financing of a residential structure or improvement constructed or improved by that residential builder or residential maintenance and alteration contractor.

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

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

(e) A person licensed under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, not making, brokering, or servicing mortgage loans as described in this act in a 12-month period from January 1 to December 31.

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

(g) A mortgage lender that in the aggregate with any affiliates makes 10 or fewer mortgage loans in a 12-month period from January 1 to December 31.

(h) A mortgage servicer that in the aggregate with any affiliates services 10 or fewer mortgage loans in a 12-month period from January 1 to December 31.

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

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

(k) A person who makes mortgage loans exclusively for the benefit of employees of that person if the proceeds of the loan are used to assist the employee in meeting his or her housing needs.

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

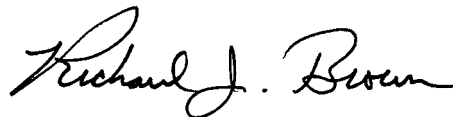
(m) A mortgage broker, mortgage lender, or a mortgage servicer that is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution, if the depository financial institution maintains its main office or a branch office in this state.

(n) A nonprofit corporation that makes, brokers, or services mortgage loans in connection with a neighborhood housing program assisted under the neighborhood reinvestment corporation act, 42 USC 8101 to 8107.

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor