

# HOUSE BILL No. 4066

January 22, 2009, Introduced by Rep. Roy Schmidt and referred to the Committee on Banking and Financial Services.

A bill to amend 1987 PA 173, entitled "Mortgage brokers, lenders, and servicers licensing act," by amending section 22 (MCL 445.1672), as amended by 2002 PA 391, and by adding section 24a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 22. (1) ~~It is a violation of this act for a~~ A licensee or  
2       registrant ~~to~~ **SHALL NOT** do any of the following:

3           (a) Fail to conduct the business in accordance with law, this  
4       act, or a rule promulgated or order issued under this act.

5           (b) Engage in fraud, deceit, or material misrepresentation in  
6       connection with any transaction governed by this act.

7           (c) Intentionally or due to gross or wanton negligence,  
8       repeatedly fail to provide borrowers material disclosures of

1 information as required by law.

2 (d) Suppress or withhold from the commissioner any information  
3 that the licensee or registrant possesses and that, if submitted,  
4 would have made the licensee or registrant ineligible for licensing  
5 or registration under this act or would have warranted the  
6 commissioner's denial of a license application or refusal to accept  
7 a registration.

8 (e) Fail to comply with 1966 PA 125, MCL 565.161 to 565.164,  
9 regulating the handling of mortgage escrow accounts by mortgagees.

10 (f) Until proper disbursement is made, fail to place in a  
11 trust or escrow account held by a federally insured depository  
12 financial institution in a manner approved by the commissioner any  
13 money, funds, deposits, checks, drafts, or other negotiable  
14 instruments received by the licensee that the borrower is obligated  
15 to pay to a third party, including amounts paid to the holder of  
16 the mortgage loan, amounts for property taxes and insurance  
17 premiums, or amounts paid under an agreement that requires if the  
18 mortgage loan is not closed the amounts paid shall be refunded to  
19 the prospective borrower or if the mortgage loan is closed the  
20 amounts paid shall be applied to fees and costs incurred at the  
21 time the mortgage loan is closed. Fees and costs include, but are  
22 not limited to, title insurance premiums and recording fees. Fees  
23 and costs do not include amounts paid to cover costs incurred to  
24 process the mortgage loan application, to obtain an appraisal, or  
25 to receive a credit report.

26 (g) Refuse to permit an examination or investigation by the  
27 commissioner of the books and affairs of the licensee or

1 registrant, or has refused or failed, within a reasonable time, to  
2 furnish any information or make any report that may be required by  
3 the commissioner under this act.

4 (h) To be convicted of a felony, or any misdemeanor of which  
5 an essential element is fraud.

6 (i) Refuse or fail to pay, within a reasonable time, those  
7 expenses assessed to the licensee or registrant under this act.

8 (j) Fail to make restitution after having been ordered to do  
9 so by the commissioner or an administrative agency, or fail to make  
10 restitution or pay damages to persons injured by the licensee's or  
11 registrant's business transactions after having been ordered to do  
12 so by a court.

13 (k) Fail to make a mortgage loan in accordance with a written  
14 commitment to make a mortgage loan issued to, and accepted by, a  
15 person when the person has timely and completely satisfied all the  
16 conditions of the commitment before the expiration of the  
17 commitment.

18 (l) Require a prospective borrower to deal exclusively with the  
19 licensee or registrant in regard to a mortgage loan application.

20 (m) Take a security interest in real property before closing  
21 the mortgage loan to secure payment of fees assessed in connection  
22 with a mortgage loan application.

23 (n) Except as provided under section 18e, knowingly permit a  
24 person to violate an order that has been issued under this act or  
25 any other financial licensing act that prohibits that person from  
26 being employed by, an agent of, or a control person of the licensee  
27 or registrant.

1           (2) A LICENSEE OR REGISTRANT SHALL NOT FAIL OR NEGLECT TO DO  
2 ANY OF THE FOLLOWING IN CONNECTION WITH THE BROKERING, SERVICING,  
3 OR MAKING OF ANY MORTGAGE LOAN:

4           (A) ACT IN GOOD FAITH AND WITH FAIR DEALING IN ANY  
5 TRANSACTION, PRACTICE, OR COURSE OF BUSINESS.

6           (B) SAFEGUARD AND ACCOUNT FOR ANY MONEY HANDLED FOR THE  
7 BORROWER.

8           (C) FOLLOW REASONABLE AND LAWFUL INSTRUCTIONS FROM THE  
9 BORROWER.

10          (D) USE REASONABLE SKILL, CARE, AND DILIGENCE.

11          (E) TIMELY AND CLEARLY DISCLOSE TO THE BORROWER MATERIAL  
12 INFORMATION THAT MIGHT REASONABLY AFFECT THE BORROWER'S RIGHTS,  
13 INTERESTS, OR ABILITY TO RECEIVE THE BORROWER'S INTENDED BENEFIT  
14 FROM THE MORTGAGE LOAN, INCLUDING, BUT NOT LIMITED TO, THE TOTAL  
15 COMPENSATION THE BROKER WOULD RECEIVE FROM ANY OF THE LOAN OPTIONS  
16 THE LICENSEE OR REGISTRANT PRESENTS TO THE BORROWER.

17          (F) MAKE REASONABLE EFFORTS TO SECURE A MORTGAGE LOAN THAT IS  
18 REASONABLY ADVANTAGEOUS TO THE BORROWER CONSIDERING ALL THE  
19 CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, THE RATES, CHARGES,  
20 AND REPAYMENT TERMS OF THE LOAN.

21          (3) THE DUTIES AND STANDARDS OF CARE CREATED IN SUBSECTION (2)  
22 CANNOT BE WAIVED OR MODIFIED.

23          SEC. 24A. (1) THE HOME LOAN PROTECTION ACT APPLIES TO A  
24 LICENSEE OR REGISTRANT. A LICENSEE OR REGISTRANT SHALL COMPLY WITH  
25 THE REQUIREMENTS OF THAT ACT IN CONNECTION WITH ANY HOME LOANS.

26          (2) IN ADDITION TO ANY PENALTIES AND REMEDIES PROVIDED BY THIS  
27 ACT, A LICENSEE OR REGISTRANT IS ALSO SUBJECT TO THE REMEDY AND

1 PENALTY PROVISIONS OF THE HOME LOAN PROTECTION ACT FOR A VIOLATION  
2 OF SUBSECTION (1).

3 (3) AS USED IN THIS SECTION:

4 (A) "HOME LOAN" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE  
5 HOME LOAN PROTECTION ACT, MCL 445.1632.

6 (B) "HOME LOAN PROTECTION ACT" MEANS THE HOME LOAN PROTECTION  
7 ACT, 2002 PA 660, MCL 445.1631 TO 445.1642.

8 Enacting section 1. This amendatory act does not take effect  
9 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 4065(request no.  
10 00953'09) of the 95th Legislature is enacted into law.