

# SENATE BILL No. 709

July 15, 2009, Introduced by Senators SWITALSKI, RICHARDVILLE, KAHN and BIRKHOLZ and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1987 PA 173, entitled "Mortgage brokers, lenders, and servicers licensing act," by amending sections 1a and 29 (MCL 445.1651a and 445.1679), section 1a as amended by 2008 PA 66 and section 29 as amended by 2008 PA 529.

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

1       Sec. 1a. As used in this act:

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

6       (b) "Board" means the mortgage industry advisory board created

1 in section 33.

2 (c) "Commissioner" means the commissioner of the office of  
3 financial and insurance services of the department of labor and  
4 economic growth or his or her authorized agent.

5 (d) "Construction loan" means a mortgage loan to construct a  
6 1-to-4 family dwelling, that is approved and closed before  
7 completion of the construction of the improvement on the real  
8 property.

9 (e) "Control person" means a director or executive officer of  
10 a licensee or registrant or a person who has the authority to  
11 participate in the direction, directly or indirectly through 1 or  
12 more other persons, of the management or policies of a licensee or  
13 registrant.

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

18 (g) "Executive officer" means an officer, member, or partner  
19 of a licensee or registrant. The term includes the chief executive  
20 officer, president, vice president, chief financial officer,  
21 controller, or compliance officer or an individual holding any  
22 other similar position.

23 (h) "Financial licensing act" means the consumer financial  
24 services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the  
25 acts listed in section 2 of the consumer financial services act,  
26 1988 PA 161, MCL 487.2052.

27 (i) "Firm commitment" means an underwriting in which a broker-

1 dealer commits to buy the mortgage loan or the entire issue of  
2 securities based upon or backed by 1 or more mortgage loans and  
3 assumes all financial responsibility for any unsold securities.

4 (j) "Individual investor" means a person that resides in this  
5 state or has its principal place of business in this state. The  
6 term does not include a bank, savings bank, savings and loan  
7 association, credit union, trust company, insurance company,  
8 investment company as defined in the investment company act of  
9 1940, 15 USC 80a-1 to 80a-64, pension or profit sharing plan if the  
10 assets of the plan are managed by a bank or trust company or other  
11 institutional manager, financial institution, institutional  
12 manager, broker-dealer that is a member of the New York stock  
13 exchange or registered under the uniform securities act, 1964 PA  
14 265, MCL 451.501 to 451.818, **OR THE UNIFORM SECURITIES ACT (2002),**  
15 **2008 PA 551, MCL 451.2101 TO 451.2703,** the federal national  
16 mortgage association, the government national mortgage association,  
17 the federal home loan mortgage corporation, or a mortgage lender or  
18 mortgage servicer.

19 (k) "License" means a license issued under this act.

20 (l) "Licensee" means a person licensed or required to be  
21 licensed under this act.

22 (m) "Loan officer" means an individual who is an employee or  
23 agent of a mortgage broker, mortgage lender, or mortgage servicer;  
24 who originates mortgage loans; and who is not an employee or agent  
25 of a depository financial institution or a subsidiary or affiliate  
26 of a depository financial institution.

27 (n) "Loan officer registrant" means an individual who is

1 currently registered under section 2a.

2 (o) "Mortgage broker" means a person who, directly or  
3 indirectly, does 1 or both of the following:

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

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

8 (p) "Mortgage lender" means a person who, directly or  
9 indirectly, makes or offers to make mortgage loans.

10 (q) "Mortgage loan" means a loan secured by a first mortgage  
11 on real property located in this state and used, or improved for  
12 use, as a dwelling and designed for occupancy by 4 or fewer  
13 families or a land contract covering real property located in this  
14 state used, or improved for use, as a dwelling and designed for  
15 occupancy by 4 or fewer families. A mortgage loan does not include  
16 a home improvement installment contract under the home improvement  
17 finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

18 (r) "Mortgage servicer" means a person who, directly or  
19 indirectly, services or offers to service mortgage loans.

20 (s) "Originate" means any of the following:

21 (i) To negotiate, arrange, or offer to negotiate or arrange a  
22 mortgage loan between a mortgage lender and 1 or more individuals.

23 (ii) To place, assist in placing, or find a mortgage loan for 1  
24 or more individuals.

25 (t) "Person" means an individual, corporation, limited  
26 liability company, partnership, association, governmental entity,  
27 or any other legal entity.

1 (u) "Real estate broker" means a broker or associate broker  
2 licensed under article 25 of the occupational code, 1980 PA 299,  
3 MCL 339.2501 to 339.2518.

4 (v) "Real estate salesperson" means a salesperson licensed  
5 under article 25 of the occupational code, 1980 PA 299, MCL  
6 339.2501 to 339.2518.

7 (w) "Register" means filing a notice with the commissioner on  
8 a form prescribed by the commissioner that notifies the  
9 commissioner of the intent to engage in the activities of a  
10 mortgage broker, mortgage lender, mortgage servicer, or loan  
11 officer in this state and the payment of any fees required under  
12 this act, along with the other documents, proofs, and fees required  
13 by the commissioner.

14 (x) "Registrant" means a person that is registered under  
15 section 6 or required to register under section 6. The term does  
16 not include a loan officer registrant.

17 (y) "Service" means the collection or remittance, or the right  
18 or obligation to collect or remit, for a lender, noteowner,  
19 noteholder, mortgage servicer, or the licensee's or registrant's  
20 own account of 4 or more installment payments of the principal,  
21 interest, or an amount placed in escrow under a mortgage loan,  
22 mortgage servicing agreement, or an agreement with the mortgagor.

23 Sec. 29. (1) An owner, partner, member, officer, director,  
24 trustee, employee, agent, broker, or other person, or a  
25 representative acting on the authority of that person that  
26 willfully or intentionally does any of the following is guilty of a  
27 misdemeanor punishable by a fine of not more than \$15,000.00 or

1 imprisonment for not more than 1 year, or both:

2 (a) Engages in this state in the business of a mortgage  
3 broker, mortgage lender, or mortgage servicer without a license or  
4 registration required under this act or acts as a loan officer in  
5 this state without a loan officer registration required under this  
6 act.

7 (b) Transfers or assigns a mortgage loan or a security  
8 directly representing an interest in 1 or more mortgage loans  
9 before the disbursement of 75% or more of the proceeds of the  
10 mortgage loan to, or for the benefit of, the borrower. This  
11 subdivision does not apply to any of the following:

12 (i) A land contract not considered to be an equitable mortgage.

13 (ii) A loan made under a state or federal government program  
14 that allows the lender to escrow more than 25% of the loan proceeds  
15 for a limited period of time.

16 (iii) A construction loan.

17 (iv) A loan that provides in writing that the loan proceeds  
18 shall be disbursed to or for the benefit of the borrower in  
19 installments or upon the request of the borrower or upon the  
20 completion of renovations or repairs to the dwelling situated on  
21 the real property subject to the mortgage loan.

22 (c) Transfers or assigns a mortgage loan or a security  
23 representing an interest in 1 or more mortgage loans to an  
24 individual investor unless 1 or more of the following apply:

25 (i) The transfer or assignment is made through a broker-dealer  
26 which is a member of the New York stock exchange.

27 (ii) The transfer or assignment is made through a broker-dealer

1 who meets all of the following criteria:

2 (A) The broker-dealer is registered under the uniform  
3 securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE UNIFORM**  
4 **SECURITIES ACT (2002), 2008 PA 551, MCL 451.2101 TO 451.2703.**

5 (B) The broker-dealer is not an affiliate of the mortgage  
6 lender unless the person acquired the broker-dealer registration,  
7 directly or indirectly, before September 1, 1987 under the uniform  
8 securities act, 1964 PA 265, MCL 451.501 to 451.818, was affiliated  
9 with a mortgage lender before September 1, 1987, and has  
10 continuously maintained that registration subsequent to September  
11 1, 1987. For purposes of this subparagraph, if an aggregate of more  
12 than 10% of the outstanding voting stock or interest in a  
13 corporation, unincorporated organization, partnership, or other  
14 legal entity that is a broker-dealer or mortgage lender is sold,  
15 transferred, assigned, or otherwise conveyed subsequent to  
16 September 1, 1987, the registration is not considered to have been  
17 continuously maintained.

18 (C) The broker-dealer acquired the mortgage loan or security  
19 on a firm commitment.

20 (iii) The transfer or assignment is made to a person who the  
21 transferor or assignor believes, or has reasonable grounds to  
22 believe, is 1 of the following:

23 (A) A business entity having either net income from operations  
24 after taxes in excess of \$100,000.00 in its last fiscal year or its  
25 latest 12-month period, or a net worth in excess of \$1,000,000.00  
26 at the time of purchase.

27 (B) An individual who, after the purchase, has an investment

1 of more than \$50,000.00 in mortgage loans or securities  
2 representing an interest in 1 or more mortgage loans, including  
3 installment payments to be made within 1 year after purchase by the  
4 individual, has either personal income before taxes in excess of  
5 \$100,000.00 for his or her last fiscal year or latest 12-month  
6 period and is capable of bearing the economic risk, or net worth in  
7 excess of \$1,000,000.00, and has the knowledge and experience in  
8 financial and business matters that he or she is capable of  
9 evaluating the merits and risks of the prospective investment, or  
10 has obtained the advice of an attorney, certified public  
11 accountant, or investment adviser registered under the investment  
12 advisers act of 1940, or an investment adviser registered under the  
13 uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, **OR THE**  
14 **UNIFORM SECURITIES ACT (2002), 2008 PA 551, MCL 451.2101 TO**  
15 **451.2703**, with respect to the merits and risks of the prospective  
16 investment.

17 (iv) A transferor or assignor does not maintain its principal  
18 place of business in this state and the transferee or assignee is  
19 not a resident of this state and does not maintain its principal  
20 place of business in this state.

21 (d) Coerces or induces a real estate appraiser to inflate the  
22 value of real property used as collateral for a mortgage loan,  
23 including, but not limited to, by doing any of the following:

24 (i) Representing or implying that a real estate appraiser will  
25 not be selected to conduct an appraisal of the real property or  
26 selected for future appraisal work unless the appraiser agrees in  
27 advance to a value, range of values, or minimum value for the real



1 property.

2 (ii) Representing or implying that a real estate appraiser will  
3 not be paid for an appraisal unless the appraiser agrees in advance  
4 to a value, range of values, or minimum value for the real  
5 property.

6 (2) Subject to subsections (4) and (5), if the commissioner  
7 finds that a licensee, registrant, or loan officer registrant has  
8 violated, or directly or indirectly counseled, aided, or abetted in  
9 a violation, of this act or the rules promulgated under this act,  
10 the commissioner may do 1 or more of the following:

11 (a) Assess a civil fine against the licensee, registrant, or  
12 loan officer registrant or a person who controls the licensee,  
13 registrant, or loan officer registrant of not more than \$3,000.00  
14 for each violation, except that the licensee, registrant, or loan  
15 officer registrant or the person shall not be fined more than  
16 \$30,000.00 for a transaction resulting in more than 1 violation,  
17 plus the costs of investigation.

18 (b) Suspend or revoke a license, registration, or loan officer  
19 registration or refuse to issue a license or renew a license,  
20 registration, or loan officer registration.

21 (c) Require the licensee, registrant, or loan officer  
22 registrant or a person who controls the licensee, registrant, or  
23 loan officer registrant to make restitution to each injured  
24 individual, if the commissioner finds that the violation of this  
25 act or a rule promulgated under this act resulted in an injury to 1  
26 or more individuals.

27 (3) A civil fine assessed under subsection (2) may be sued for

1 and recovered by and in the name of the commissioner and may be  
2 collected and enforced by summary proceedings by the attorney  
3 general. Each individual injured by a violation of this act or a  
4 rule is a separate violation. In determining under subsection (2)  
5 the amount of a fine, whether to suspend or revoke a license,  
6 registration, or loan officer registration, whether to refuse to  
7 issue or renew a license or loan officer registration, or the  
8 amount of restitution, the commissioner shall consider the extent  
9 to which the violation was a knowing and willful violation, the  
10 extent of the injury suffered because of the violation, the  
11 corrective action taken by the licensee, registrant, or loan  
12 officer registrant to ensure that the violation will not be  
13 repeated, and the record of the licensee, registrant, or loan  
14 officer registrant in complying with this act. Any proceedings  
15 under this subsection are subject to the procedures of the  
16 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
17 24.328.

18 (4) Subsection (2) does not apply to a violation of this act  
19 that results from a bona fide error that occurs notwithstanding the  
20 adoption and observance of reasonable procedures intended to  
21 prevent the occurrence of the error.

22 (5) If a loan officer registrant violates section 22b(e) (ii),  
23 the commissioner shall revoke his or her loan officer registration.  
24 Revocation of a loan officer registration under this subsection  
25 does not affect the commissioner's authority to pursue any other  
26 remedy available under subsection (2) for that violation.