

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Senator Hunter

ENROLLED SENATE BILL No. 43

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," (MCL 750.1 to 750.568) by adding section 219d.

The People of the State of Michigan enact:

Sec. 219d. (1) A person that knowingly, with the intent to defraud, does any of the following is guilty of the crime of residential mortgage fraud, punishable as provided in this section:

(a) Makes a false statement or misrepresentation concerning a material fact or deliberately conceals or fails to disclose a material fact during the mortgage lending process.

(b) During the mortgage lending process, makes or uses a false pretense, or uses or facilitates the use of another person's false pretense, concerning the person's intent to perform a future event or to have a future event performed. As used in this subdivision, "false pretense" means that term as defined in section 218.

(c) Uses or facilitates the use of a false statement or misrepresentation made by another person concerning a material fact or deliberately uses or facilitates the use of another person's concealment or failure to disclose a material fact during the mortgage lending process.

(d) Receives or attempts to receive any proceeds or any other money in connection with the mortgage lending process that the person knows resulted from a violation of subdivision (a) or (b).

(e) Files or causes to be filed with the register of deeds of any county of this state any document involved in the mortgage lending process that the person knows to contain a deliberate material misstatement, misrepresentation, or omission.

(f) Fails to disburse funds in accordance with the settlement or closing statement for the mortgage loan.

(g) Conspires to violate subdivision (a), (b), (c), (d), (e), or (f).

(h) Solicits, encourages, or coerces another person to violate subdivision (a), (b), (c), (d), (e), or (f).

(2) A crime of residential mortgage fraud under this section shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

(3) For the purpose of determining venue of a prosecution under this section, a violation of this section is considered to have been committed in any of the following:

- (a) In the county in which the residential property for which the mortgage loan is obtained or sought is located.
 - (b) In the county in which an owner of the property for which the mortgage loan was obtained or sought resides.
 - (c) In any county in which a material act was performed in furtherance of the violation.
- (4) A person who violates this section is guilty of a felony punishable by 1 of the following:

(a) Except for a violation described in subdivision (b), imprisonment for not more than 15 years or a fine of not more than \$100,000.00, or both.

(b) If the violation occurs in connection with the mortgage lending process in which the loan value stated on documents used in the mortgage lending process exceeds \$100,000.00, imprisonment for not more than 20 years or a fine of not more than \$500,000.00, or both.

(5) Each violation of this section constitutes a separate offense.

(6) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law that is committed by that person while violating this section.

(7) It is an affirmative defense to a prosecution of a defendant for a violation of this section committed by an employee or agent of the defendant if the defendant demonstrates all of the following by a preponderance of the evidence:

(a) The defendant had in force at the time of the violation and continues to have in force a written policy that includes at least all of the following:

- (i) A prohibition against conduct that violates this section by employees and agents of the defendant.
- (ii) Penalties or discipline for violation of the policy.
- (iii) A process for educating employees and agents concerning the policy and consequences of a violation.

(iv) A requirement for a criminal history check before employing an employee or engaging an agent and a requirement that the defendant will not employ or engage an individual whose criminal history check reveals a previous conviction of a crime involving fraud.

(b) The defendant demonstrates that it enforces the written policy described in subdivision (a).

(c) Before the violation of this section, the defendant communicated the written policy described in subdivision (a) and the consequences for violating the policy to the employee or agent who committed the violation.

(8) Property of any kind used or intended for use in the course of, derived from, or received in connection with a violation of this section by the person that violated this section is subject to forfeiture in the same manner as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(9) All of the following apply if a person is convicted of a violation of subsection (1) or of a lesser included offense in connection with a completed residential mortgage loan transaction:

(a) Within 6 months of the date of the conviction, the mortgagor who obtained the residential mortgage loan may request an order described in subdivision (b) if the court makes all of the following findings:

(i) The mortgagor was a victim of the residential mortgage fraud and was not involved in any criminal activity.

(ii) The mortgagor did not knowingly apply for the residential mortgage loan or execute the documents involved in the mortgage lending process.

(b) If subdivision (a) is met, the court shall enter an order indicating that the residential mortgage and other documents involved in the mortgage lending process are invalid. The court shall require that the victim of the residential mortgage fraud record a certified copy of the order and a copy of the invalid residential mortgage in the office of the register of deeds of the county where the mortgaged residential property is located, and the register of deeds shall record those documents as provided in section 2935 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2935. The court shall designate in the order the person responsible for paying the fee for recording those documents.

(c) If a mortgagor described in subdivision (a) requests an order described in subdivision (b), and the residential mortgage or any other documents involved in the mortgage lending process were previously recorded, the prosecutor in the criminal proceeding shall provide the circuit court with the name of the county in which the document or documents were recorded and the liber and page number or unique identifying reference number of the recorded residential mortgage or other document or documents, and the court shall include that information in the order.

(d) If a county register of deeds receives a certified copy of an order and a copy of the invalid residential mortgage for recording, the register of deeds shall make reference to the liber and page number or unique identifying reference number of the invalid residential mortgage in the index of the recorded documents.

(e) If the circuit court enters an order described in subdivision (b), before the order is recorded, the victim of the residential mortgage fraud shall provide written notice to the residential mortgage lender, and any successors or assigns of the lender, that the court has entered the order. A lender and any successor or assignee of a lender that receives a notice under this subdivision may request a court hearing to contest the court's order, but that person must request the hearing within 30 days after receiving the notice.

(10) As used in this section:

(a) "Documents involved in the mortgage lending process" includes, but is not limited to, mortgages; deeds; surveys; inspection reports; uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any written disclosures required by law.

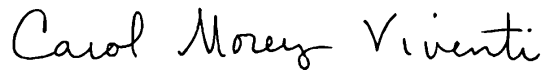
(b) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan, including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(c) "Person" means an individual, corporation, limited liability company, partnership, trustee, association, or other legal entity.

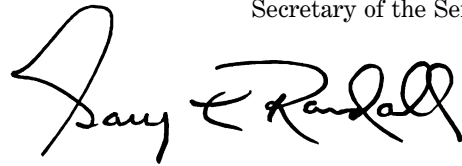
(d) "Residential mortgage loan" means a loan or agreement to extend credit made to a person that is secured by a mortgage, security interest, or other document representing a security interest or lien on any interest in a 1-family to 4-family dwelling located in this state. The term includes a renewal, extension, or refinancing of a residential mortgage loan.

Enacting section 1. This amendatory act takes effect January 1, 2012.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor