

# HOUSE BILL NO. 5363

November 14, 2023, Introduced by Rep. Skaggs and referred to the Committee on Judiciary.

A bill to amend 1988 PA 161, entitled  
"Consumer financial services act,"  
by amending sections 2 and 6 (MCL 487.2052 and 487.2056), as  
amended by 2006 PA 252.

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

1           Sec. 2. As used in this act:

2           (a) "Applicant" means a person that has applied to the  
3 commissioner to be licensed under this act.

4           (b) "Bureau" means the ~~office of financial and insurance~~  
5 ~~services of the department of labor and economic growth.~~**department**

1 **of insurance and financial services.**

2 (c) "Business activity" means any activity regulated ~~by~~**under**  
3 any of the financial licensing acts.

4 (d) "Class I license" means a license issued under this act  
5 that authorizes the licensee to engage in all of the activities  
6 permitted under any of the financial licensing acts.

7 (e) "Class II license" means a license issued under this act  
8 that authorizes all of the activities permitted under a class I  
9 license except for ~~activities permitted under the sale of checks~~  
10 ~~act, 1960 PA 136, MCL 487.901 to 487.916,~~ loan servicing activities  
11 under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to  
12 493.81, or the mortgage brokers, lenders, and servicers licensing  
13 act, 1987 PA 173, MCL 445.1651 to 445.1684.

14 (f) "Commissioner" means the ~~commissioner of the office of~~  
15 ~~financial and insurance services or an~~ **director of the bureau or an**  
16 authorized representative of the ~~commissioner~~**director**.

17 (g) "Control person" means a director or executive officer of  
18 a licensee or a person ~~who~~**that** has the authority to participate in  
19 the direction, directly or indirectly through 1 or more other  
20 persons, of the management or policies of a licensee.

21 (h) "Depository financial institution" means a bank, savings  
22 and loan association, savings bank, or credit union organized under  
23 the laws of this state, another state, the District of Columbia,  
24 the United States, or a territory or protectorate of the United  
25 States, whose deposits are insured by an agency of the federal  
26 government.

27 (i) "Executive officer" means an officer, member, or partner  
28 of a licensee, including chief executive officer, president, vice  
29 president, chief financial officer, controller, compliance officer,

1 or any other similar position.

2 (j) "Financial licensing acts" means ~~this all of the~~  
3 **following:**

4 (i) **This** act. ~~the~~

5 (ii) **The** regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.  
6 ~~the~~

7 (iii) **The** secondary mortgage loan act, 1981 PA 125, MCL 493.51  
8 to 493.81. ~~the~~

9 (iv) **The** motor vehicle sales finance act, 1950 (Ex Sess) PA 27,  
10 MCL 492.101 to ~~492.141;~~ **492.137a.**

11 (v) 1984 PA 379, MCL 493.101 to 493.114. ~~the sale of checks~~  
12 ~~act, 1960 PA 136, MCL 487.901 to 487.916; the~~

13 (vi) **The** money transmission services act, **2006 PA 250**, MCL  
14 487.1001 to ~~487.1048; and the~~ **487.1047.**

15 (vii) **The** mortgage brokers, lenders, and servicers licensing  
16 act, 1987 PA 173, MCL 445.1651 to 445.1684.

17 (k) "Licensee" means a person that is licensed under this act.

18 (l) "Loan servicing activities" means the collection or  
19 remittance for a lender, noteowner, noteholder, or the licensee's  
20 own account of 4 or more installment payments of the principal,  
21 interest, or an amount placed in escrow under a mortgage servicing  
22 agreement or a mortgage loan subject to the mortgage brokers,  
23 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to  
24 445.1684, or a mortgage servicing agreement or secondary mortgage  
25 loan subject to the secondary mortgage loan act, 1981 PA 125, MCL  
26 493.51 to 493.81, or an agreement with the mortgagor.

27 (m) "Person" means an individual, corporation, partnership,  
28 association, limited liability company, or any other legal entity.

29 Sec. 6. (1) An applicant for a license shall furnish a surety

1 bond or letter of credit to secure its obligations under this act  
 2 to the commissioner. Except as provided in this subsection, the  
 3 principal amount of a surety bond or letter of credit ~~shall~~**must** be  
 4 at least \$500,000.00. If the applicant intends to provide money  
 5 transmission services, as **that term is** defined in section ~~2-3~~ of  
 6 the money transmission services act, **2006 PA 250, MCL 487.1003**, the  
 7 applicant ~~shall~~**must** file a surety bond that is in a principal  
 8 amount as determined under section 13(5) (b) of the money  
 9 transmission services act, **2006 PA 250, MCL 487.1013**, for a  
 10 licensee under that act.

11 (2) A surety bond described in subsection (1) ~~shall~~**must** be  
 12 payable to the commissioner for the benefit of the people of ~~the~~  
 13 ~~state of Michigan~~**this state** for the use of, and may be sued on by,  
 14 ~~the~~**this** state. A surety bond or letter of credit ~~shall remain~~  
 15 **remains** for the duration of the licensure period.

16 (3) A surety bond or letter of credit required under  
 17 subsection (1) ~~shall~~**must** be in a form satisfactory to the  
 18 commissioner and payable ~~upon~~**on** demand by the commissioner if ~~he~~  
 19 ~~or she~~**the commissioner** determines that the licensee is not  
 20 conducting its activities as required by this act and all of the  
 21 rules promulgated under this act, and has failed to pay all money  
 22 that becomes due to a person ~~who~~**that** is an installment buyer under  
 23 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL  
 24 492.101 to ~~492.141~~, ~~Michigan residents who purchase checks under~~  
 25 ~~the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916,~~  
 26 ~~Michigan~~**492.137a**, residents **of this state** who purchase money  
 27 transmission services ~~as defined in section 2 of~~**under** the money  
 28 transmission services act, **2006 PA 250, MCL 487.1001 to 487.1047**,  
 29 loan applicants, loan servicing customers, and borrowers under the

1 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or  
 2 the mortgage brokers, lenders, and servicers licensing act, 1987 PA  
 3 173, MCL 445.1651 to 445.1684, and the commissioner.

4 (4) The commissioner shall prioritize and pay claims against a  
 5 bond or letter of credit filed with the commissioner under this  
 6 section in a manner that, in the commissioner's discretion, best  
 7 protects the public interest.

8 (5) Claims described in subsection (4) may only be filed  
 9 against a licensee's bond or letter of credit by the commissioner  
 10 on behalf of the bureau and of individuals having claims and who  
 11 are, as applicable, the licensee's loan applicants, loan servicing  
 12 customers, and borrowers under the secondary mortgage loan act,  
 13 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers,  
 14 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to  
 15 445.1684, ~~Michigan residents who purchase checks under the sale of~~  
 16 ~~checks act, 1960 PA 136, MCL 487.901 to 487.916, Michigan residents~~  
 17 **of this state** who purchase money transmission services ~~as defined~~  
 18 ~~in section 2 of~~ **under** the money transmission services act, **2006 PA**  
 19 **250, MCL 487.1001 to 487.1047**, or persons ~~who~~ **that** are installment  
 20 buyers under the motor vehicle sales finance act, 1950 (Ex Sess) PA  
 21 27, MCL 492.101 to ~~492.141.~~ **492.137a.**

22 (6) ~~Claims~~ **A claim** filed with the commissioner against a bond  
 23 or letter of credit by a loan applicant, loan servicing customer,  
 24 or borrower under the secondary mortgage loan act, 1981 PA 125, MCL  
 25 493.51 to 493.81, or the mortgage brokers, lenders, and servicers  
 26 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, ~~shall~~ **must**  
 27 involve, as applicable, only a mortgage loan, mortgage loan  
 28 application, secondary mortgage loan, or secondary mortgage loan  
 29 application secured or to be secured by real property used as a

1 dwelling located in this state. The amount of the claim ~~shall~~**must**  
2 not exceed actual fees paid by the claimant to the licensee in  
3 connection with a loan application, overcharges of principal and  
4 interest, and excess escrow collections by the licensee.

5 (7) Before payment of any claim filed under this section,  
6 unless the commissioner waives, in whole or in part, the right to  
7 priority of payment, the commissioner ~~shall~~**must** be paid in full  
8 for fines and fees due to the bureau and for expenses incurred in  
9 investigating the licensee and in distributing the proceeds of the  
10 bond or letter of credit. In the event that valid claims exceed the  
11 amount of the bond or letter of credit, each claimant except the  
12 commissioner is entitled only to a pro rata amount of ~~his or her~~  
13 **the claimant's** valid claim.

14 Enacting section 1. This amendatory act does not take effect  
15 unless Senate Bill No. \_\_\_\_ or House Bill No. 5354 (request no.  
16 03158'23) of the 102nd Legislature is enacted into law.