

HOUSE BILL No. 6435

September 7, 2006, Introduced by Reps. Casperson, Marleau, Amos, Vander Veen, Taub, Mortimer, Baxter, Emmons, Jones, Booher, David Law, Pastor and Shaffer 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 29 (MCL 445.1679), as amended by 1996 PA 210.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 29. (1) A person, or any owner, partner, member, officer,
2 director, trustee, employee, agent, broker, or their representative
3 acting on the authority of ~~such~~ **THAT** person, who willfully or
4 intentionally does any of the following is guilty of a misdemeanor
5 punishable by a fine of not more than \$5,000.00, or imprisonment
6 for not more than 3 years, or both:

7 (a) Engages in this state in the business of a mortgage
8 broker, mortgage lender, or mortgage servicer without a license or
9 registration required under this act.

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

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

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

10 (iii) A construction loan.

11 (iv) A loan that provides in writing that the loan proceeds
12 shall be disbursed to or for the benefit of the borrower in
13 installments or upon the request of the borrower or upon the
14 completion of renovations or repairs to the dwelling situated on
15 the real property subject to the mortgage loan.

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

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

21 (ii) The transfer or assignment is made through a broker-dealer
22 who meets all of the following criteria:

23 (A) The broker-dealer is registered under the uniform
24 securities act, ~~Act No. 265 of the Public Acts of 1964, being~~
25 ~~sections 451.501 to 451.818 of the Michigan Compiled Laws~~ **1964 PA**
26 **265, MCL 451.501 TO 451.818.**

27 (B) The broker-dealer is not an affiliate of the mortgage

1 lender unless the person acquired the broker-dealer registration,
2 directly or indirectly, before September 1, 1987 under ~~Act No. 265~~
3 ~~of the Public Acts of 1964~~ **THE UNIFORM SECURITIES ACT, 1964 PA**
4 **265, MCL 451.501 TO 451.818**, was affiliated with a mortgage lender
5 before September 1, 1987, and has continuously maintained that
6 registration subsequent to September 1, 1987. For purposes of this
7 subparagraph, if an aggregate of more than 10% of the outstanding
8 voting stock or interest in a corporation, unincorporated
9 organization, partnership, or other legal entity that is a broker-
10 dealer or mortgage lender is sold, transferred, assigned, or
11 otherwise conveyed subsequent to September 1, 1987, the
12 registration ~~shall be~~ **IS NOT** considered to ~~not~~ have been
13 continuously maintained.

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

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

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

23 (B) An individual who, after the purchase, has an investment
24 of more than \$50,000.00 in ~~such loans or securities~~ **MORTGAGE**
25 **LOANS OR SECURITIES REPRESENTING AN INTEREST IN 1 OR MORE MORTGAGE**
26 **LOANS**, including installment payments to be made within 1 year
27 after purchase by the individual, has either personal income before

1 taxes in excess of \$100,000.00 for his or her last fiscal year or
2 latest 12-month period and is capable of bearing the economic risk,
3 or net worth in excess of \$1,000,000.00, and has the knowledge and
4 experience in financial and business matters that he or she is
5 capable of evaluating the merits and risks of the prospective
6 investment, or has obtained the advice of an attorney, certified
7 public accountant, or investment adviser registered under the
8 investment advisers act of 1940, **15 USC 80B-1 TO 80B-21**, or an
9 investment adviser registered under ~~Act No. 265 of the Public Acts~~
10 ~~of 1964~~ **THE UNIFORM SECURITIES ACT, 1964 PA 265, MCL 451.501 TO**
11 **451.818**, with respect to the merits and risks of the prospective
12 investment.

13 (iv) A transferor or assignor does not maintain its principal
14 place of business in this state and the transferee or assignee is
15 not a resident of this state and does not maintain its principal
16 place of business in this state.

17 (D) **COERCE OR INDUCE A REAL ESTATE APPRAISER TO INFLATE THE**
18 **VALUE OF REAL PROPERTY USED AS COLLATERAL FOR A MORTGAGE LOAN BY**
19 **DOING ANY OF THE FOLLOWING:**

20 (i) **REPRESENTING OR IMPLYING THAT A REAL ESTATE APPRAISER WILL**
21 **NOT BE SELECTED TO CONDUCT AN APPRAISAL OF THE REAL PROPERTY OR**
22 **SELECTED FOR FUTURE APPRAISAL WORK UNLESS THE APPRAISER AGREES IN**
23 **ADVANCE TO A VALUE, RANGE OF VALUES, OR MINIMUM VALUE FOR THE REAL**
24 **PROPERTY.**

25 (ii) **REPRESENTING OR IMPLYING THAT A REAL ESTATE APPRAISER WILL**
26 **NOT BE PAID FOR AN APPRAISAL UNLESS THE APPRAISER AGREES IN ADVANCE**
27 **TO A VALUE, RANGE OF VALUES, OR MINIMUM VALUE FOR THE REAL**

1 **PROPERTY.**

2 (2) If the commissioner finds that a licensee or registrant
3 has violated this act or the rules promulgated under this act, the
4 commissioner may do 1 or more of the following:

5 (a) Assess a civil fine against the licensee, registrant, or a
6 person who controls the licensee or registrant of not more than
7 \$1,000.00 for each violation, except that the licensee, registrant,
8 or a person shall not be fined more than \$10,000.00 for a
9 transaction resulting in more than 1 violation, plus the costs of
10 investigation.

11 (b) Suspend or revoke a license or registration or refuse to
12 issue a license or renew a license or registration.

13 (c) Require the licensee or registrant or a person who
14 controls the licensee or registrant to make restitution to each
15 injured individual, if the commissioner finds that the violation of
16 this act or a rule promulgated under this act resulted in an injury
17 to 1 or more individuals.

18 (3) A civil fine assessed under subsection (2) may be sued for
19 and recovered by and in the name of the commissioner and may be
20 collected and enforced by summary proceedings by the attorney
21 general. Each individual injured by a violation of this act or a
22 rule ~~shall constitute~~ **IS** a separate violation. In determining
23 under subsection (2) the amount of a fine, whether to suspend or
24 revoke a license or registration, whether to refuse to issue or
25 renew a license, or the amount of restitution, the commissioner
26 shall consider the extent to which the violation was a knowing and
27 willful violation, the extent of the injury suffered because of the

1 violation, the corrective action taken by the licensee or
2 registrant to ensure that the violation will not be repeated, and
3 the record of the licensee or registrant in complying with this
4 act. Any proceedings under this subsection shall be subject to the
5 procedures of the administrative procedures act of 1969, ~~Act No.~~
6 ~~306 of the Public Acts of 1969, being sections 24.201 to 24.328 of~~
7 ~~the Michigan Compiled Laws~~ **1969 PA 306, MCL 24.201 TO 24.328.**

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