

SENATE BILL No. 639

June 23, 2005, Introduced by Senators STAMAS and BISHOP 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, 2, and 4 (MCL 445.1651a, 445.1652, and 445.1654), section 1a as amended by 2002 PA 391, section 2 as amended by 2002 PA 4, and section 4 as amended by 1996 PA 210.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1a. As used in this act, unless the context requires
2 otherwise:

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

7 (b) "Commissioner" means the commissioner of the office of

1 financial and insurance services of the department of ~~consumer and~~
2 ~~industry services~~ **LABOR AND ECONOMIC GROWTH** or his or her
3 authorized agent.

4 (c) "Construction loan" means a mortgage loan for the purpose
5 of constructing a 1-to-4 family dwelling, which loan is approved
6 and closed before completion of the construction of the improvement
7 on the real property.

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

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

16 **(F) "EXCLUSIVE BROKER" MEANS AN INDIVIDUAL WHO BROKERS**
17 **MORTGAGE LOANS SOLELY TO 1 LICENSEE OR REGISTRANT, IS COMPENSATED**
18 **SOLELY BY THAT LICENSEE OR REGISTRANT, AND IS INDEMNIFIED BY THE**
19 **LICENSEE OR REGISTRANT AS PROVIDED IN SECTION 4. THE ACTIONS OR**
20 **PRACTICES OF AN EXCLUSIVE BROKER IN BROKERING A MORTGAGE LOAN ARE**
21 **THE ACTIONS OR PRACTICES OF THE LICENSEE OR REGISTRANT.**

22 (G) ~~(f)~~ "Executive officer" means an officer, member, or
23 partner of a licensee or registrant, including chief executive
24 officer, president, vice president, chief financial officer,
25 controller, compliance officer, or any other similar position.

26 (H) ~~(g)~~ "Financial licensing act" means the consumer
27 financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, and

1 any of the acts listed in section 2 of the consumer financial
2 services act, 1988 PA 161, MCL 487.2052.

3 (I) ~~(h)~~ "Firm commitment" means an underwriting in which a
4 broker-dealer commits to buy the mortgage loan or the entire issue
5 of securities based upon or backed by 1 or more mortgage loans and
6 assumes all financial responsibility for any unsold securities.

7 (J) ~~(i)~~ "Individual investor" means a person residing in
8 this state or having its principal place of business in this state,
9 other than a bank, savings bank, savings and loan association,
10 credit union, trust company, insurance company, investment company
11 as defined in the investment company act of 1940, ~~title I of~~
12 ~~chapter 686, 54 Stat. 789, 15 U.S.C. USC 80a-1 to 80a-3 and~~
13 ~~80a-4 to 80a-64~~, pension or profit sharing plan, the assets of
14 which are managed by a bank or trust company or other institutional
15 manager, financial institution, institutional manager, broker-
16 dealer that is a member of the New York stock exchange or
17 registered under the uniform securities act, 1964 PA 265, MCL
18 451.501 to 451.818, the federal national mortgage association, the
19 government national mortgage association, the federal home loan
20 mortgage corporation, or a mortgage lender or mortgage servicer.

21 (K) ~~(j)~~ "License" means a license issued under this act.

22 (L) ~~(k)~~ "Licensee" means a person licensed or required to be
23 licensed under this act.

24 (M) ~~(l)~~ "Mortgage broker" means a person who, directly or
25 indirectly, does 1 or both of the following:

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

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

3 (N) ~~—(m)—~~ "Mortgage lender" means a person who, directly or
4 indirectly, makes or offers to make mortgage loans.

5 (O) ~~—(n)—~~ "Mortgage loan" means a loan secured by a first
6 mortgage on real property located in this state and used, or
7 improved to be used, as a dwelling and designed for occupancy by 4
8 or fewer families or a land contract covering real property located
9 in this state used, or improved to be used, as a dwelling and
10 designed for occupancy by 4 or fewer families. A mortgage loan does
11 not include a home improvement installment contract under the home
12 improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

13 (P) ~~—(o)—~~ "Mortgage servicer" means a person who, directly or
14 indirectly, services or offers to service mortgage loans.

15 (Q) ~~—(p)—~~ "Person" means an individual, corporation,
16 partnership, association, governmental entity, or any other legal
17 entity.

18 (R) ~~—(q)—~~ "Real estate broker" means a broker or associate
19 broker licensed under article 25 of the occupational code, 1980 PA
20 299, MCL 339.2501 to 339.2518.

21 (S) ~~—(r)—~~ "Real estate salesperson" means a salesperson
22 licensed under article 25 of the occupational code, 1980 PA 299,
23 MCL 339.2501 to 339.2518.

24 (T) ~~—(s)—~~ "Register" means filing a notice with the
25 commissioner on a form prescribed by the commissioner that notifies
26 the commissioner of the intent to engage in the activities of a
27 mortgage broker, mortgage lender, or mortgage servicer in this

1 state and the payment of any fees required under this act, along
 2 with the other documents, proofs, and fees required by the
 3 commissioner.

4 (U) ~~-(t)-~~ "Registrant" means a person registered or required
 5 to be registered under this act.

6 (V) ~~-(u)-~~ "Service" means the collection or remittance, or the
 7 right or obligation to collect or remit, for a lender, noteowner,
 8 noteholder, mortgage servicer, or the licensee's or registrant's
 9 own account of 4 or more installment payments of the principal,
 10 interest, or an amount placed in escrow under a mortgage loan,
 11 mortgage servicing agreement, or an agreement with the mortgagor.

12 Sec. 2. (1) A person shall not act as a mortgage broker,
 13 mortgage lender, or mortgage servicer without first obtaining a
 14 license or registering under this act, unless 1 or more of the
 15 following apply:

16 (a) The person is ~~solely~~ **AN INDIVIDUAL WHO IS** performing
 17 services as an employee of only 1 mortgage broker, mortgage lender,
 18 or mortgage servicer.

19 **(B) THE PERSON IS AN EXCLUSIVE BROKER.**

20 (C) ~~-(b)-~~ The person is exempted from ~~the~~ **THIS** act under
 21 section 25.

22 (D) ~~-(e)-~~ The person is licensed as a class I licensee under
 23 the consumer financial services act, 1988 PA 161, MCL 487.2051 to
 24 487.2072.

25 (2) A person that is licensed to make regulatory loans under
 26 the regulatory loan act, ~~of 1963,~~ 1939 PA 21, MCL 493.1 to ~~493.25~~
 27 **493.24**, or is licensed to make secondary mortgage loans under the

1 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and
2 is registered with the commissioner shall file with the
3 commissioner an application for a license under section 3(1) or
4 shall discontinue all activities that are subject to this act.

5 (3) Unless a residential mortgage originator is ~~otherwise~~
6 licensed or registered **AS A MORTGAGE BROKER** under this act **OR IS A**
7 **MORTGAGE BROKER EXEMPT FROM LICENSING OR REGISTRATION UNDER THIS**
8 **ACT**, a residential mortgage originator shall not receive directly
9 or indirectly any compensation, commission, fee, points, or other
10 remuneration or benefits from a mortgage broker, mortgage lender,
11 or mortgage servicer other than the employer of the residential
12 mortgage originator.

13 (4) Unless a residential mortgage originator is ~~otherwise~~
14 licensed or registered **AS A MORTGAGE BROKER** under this act **OR IS A**
15 **MORTGAGE BROKER EXEMPT FROM LICENSING OR REGISTRATION UNDER THIS**
16 **ACT**, a mortgage broker, mortgage lender, or mortgage servicer shall
17 not pay directly or indirectly any compensation, commission, fee,
18 points, or other remuneration or benefits to a residential mortgage
19 originator other than an employee of the mortgage broker, mortgage
20 lender, or mortgage servicer. As used in this subsection and
21 subsection (3), "residential mortgage originator" means a person
22 who assists another person in obtaining a mortgage loan.

23 (5) A mortgage broker, mortgage lender, or mortgage servicer
24 that ~~was~~ **IS** exempt from regulation under this act and is a
25 subsidiary or affiliate of a depository financial institution or a
26 depository financial institution holding company that does not
27 maintain a main office or branch office in this state, shall

1 register under section 6 or shall discontinue all activities
2 subject to this act.

3 (6) Except for a state or nationally chartered bank, savings
4 bank, or an affiliate of a bank or savings bank, ~~the~~ A person
5 subject to this act shall not include in its name or assumed name,
6 the words "bank", "banker", "banking", "banc", "bankcorp",
7 "bancorp", or any other words or phrases that would imply that the
8 person is a bank, is engaged in the business of banking, or is
9 affiliated with a bank or savings bank. It is not a violation of
10 this subsection for a licensee or registrant to use the term
11 "mortgage banker" or "mortgage banking" in its name or assumed
12 name. A person subject to this act whose name or assumed name on
13 January 1, 1995 contained a word prohibited by this section may
14 continue to use the name or assumed name.

15 Sec. 4. (1) Except as otherwise provided in this section, at
16 the time of filing an application for a license or renewal of a
17 license, the applicant shall do all of the following:

18 (a) Provide proof of financial responsibility in the following
19 amounts, **AS APPLICABLE**:

20 (i) \$25,000.00 for an applicant who acts as a mortgage broker
21 and who receives funds from a prospective borrower before the
22 closing of the mortgage loan or who acts as a mortgage lender.

23 **(ii) IF AN APPLICANT DESCRIBED IN SUBPARAGRAPH (i) CONDUCTS**
24 **BUSINESS USING 1 OR MORE EXCLUSIVE BROKERS, AN ADDITIONAL**
25 **\$20,000.00 FOR EACH EXCLUSIVE BROKER THROUGH WHICH THE APPLICANT**
26 **CONDUCTS BUSINESS REGULATED BY THIS ACT. HOWEVER, THE TOTAL AMOUNT**
27 **REQUIRED IN THIS SUBPARAGRAPH SHALL NOT EXCEED \$1,000,000.00.**

1 ~~(iii)~~ ~~—(ii)—~~ \$125,000.00 for an applicant who acts as a mortgage
2 servicer.

3 **(iv) IF AN APPLICANT DESCRIBED IN SUBPARAGRAPH (iii) CONDUCTS**
4 **BUSINESS USING 1 OR MORE EXCLUSIVE BROKERS, AN ADDITIONAL**
5 **\$20,000.00 FOR EACH EXCLUSIVE BROKER THROUGH WHICH THE APPLICANT**
6 **CONDUCTS BUSINESS REGULATED BY THIS ACT. HOWEVER, THE TOTAL AMOUNT**
7 **REQUIRED IN THIS SUBPARAGRAPH SHALL NOT EXCEED \$1,000,000.00.**

8 (b) Provide proof of financial responsibility by 1 of the
9 following:

10 (i) A corporate surety bond payable to the commissioner,
11 executed by a corporate surety approved by the commissioner, which
12 expires no earlier than the date the license shall expire.

13 (ii) An irrevocable letter of credit upon which the applicant
14 is the obligor, which expires no earlier than the date the license
15 shall expire, issued by a bank, savings bank, savings and loan
16 association, or credit union the deposits of which are insured by
17 an agency of the federal government, and the terms of which letter
18 of credit are approved by the commissioner.

19 **(2) A LICENSEE OR REGISTRANT THAT CONDUCTS BUSINESS REGULATED**
20 **BY THIS ACT USING 1 OR MORE EXCLUSIVE BROKERS SHALL ENTER INTO AN**
21 **INDEMNIFICATION AGREEMENT, SUBJECT TO THE APPROVAL OF THE**
22 **COMMISSIONER, TO PROTECT BORROWERS FROM MONETARY DAMAGES THAT MAY**
23 **RESULT FROM DOING BUSINESS WITH THE EXCLUSIVE BROKERS THROUGH WHICH**
24 **THE LICENSEE OR REGISTRANT CONDUCTS BUSINESS REGULATED BY THIS ACT.**
25 **THE INDEMNIFICATION SHALL BE PROVIDED IN THE AMOUNT AND FORM**
26 **REQUIRED BY SUBSECTION (1).**

27 ~~(3)~~ ~~—(2)—~~ The bond or letter of credit deposited under

1 subsection (1) shall be conditioned upon the conduct of the
2 business in accordance with the provisions of this act and all
3 rules promulgated by the commissioner, and the payment of all money
4 that becomes due.

5 (4) ~~—(3)—~~ In place of depositing a bond or letter of credit,
6 an applicant may pay a nonrefundable administrative fee established
7 by the commissioner not to exceed \$100.00 and furnish 1 of the
8 following as proof of financial responsibility:

9 (a) Deposit with the state treasurer, under terms prescribed
10 by the commissioner, obligations of the United States, or
11 obligations which are guaranteed fully as to principal and interest
12 by the United States, or any general obligations of any state or
13 any political subdivision of the United States, with a maturity
14 date of 3 years or less, in an amount equal to, or greater than,
15 the amount of the required bond. Interest earned under obligations
16 shall accrue to the account of the applicant.

17 (b) Deposit with the state treasurer, under terms prescribed
18 by the commissioner, a certificate of deposit of a federally
19 insured financial institution with a maturity date of 3 years or
20 less for an amount payable which is equal to, or greater than, the
21 amount of the required bond and which is not available for
22 withdrawal except by direct order of the commissioner. Interest
23 earned under the certificate shall accrue to the account of the
24 applicant.

25 (5) ~~—(4)—~~ Upon application as prescribed by the commissioner,
26 the commissioner may reduce, waive, or modify the requirements
27 under this section for a mortgage servicer who services not more

1 than 300 mortgage loans and who does not collect money for the
2 purpose of paying taxes or insurance pursuant to the mortgage loan.

3 (6) ~~—(5)—~~ The commissioner shall waive the requirements of
4 this section and section 5 upon application by a mortgage servicer
5 who is a licensed real estate broker or real estate salesperson,
6 services more than 75 land contracts, has a satisfactory record of
7 compliance with applicable state and federal law, and does not
8 engage in any other activity regulated by this act.