

SENATE BILL No. 833

October 16, 2007, Introduced by Senators SANBORN, RICHARDVILLE, ANDERSON, GLEASON, SCHAUER, BIRKHOLZ, STAMAS, CLARKE, OLSHOVE, BROWN, CASSIS and HUNTER 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 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~~ **AN** owner, partner, member,
2 officer, director, trustee, employee, agent, broker, or ~~their~~ **OTHER**
3 **PERSON, OR A** representative acting on the authority of ~~such~~ **THAT**
4 person ~~who~~ **THAT** willfully or intentionally does any of the
5 following is guilty of a misdemeanor punishable by a fine of not
6 more than ~~\$5,000.00,~~ **\$15,000.00** or imprisonment for not more than ~~3~~
7 ~~years~~ **1 YEAR**, or both:

8 (a) Engages in this state in the business of a mortgage

1 broker, mortgage lender, or mortgage servicer without a license or
2 registration required under this act **OR ACTS AS A LOAN OFFICER IN**
3 **THIS STATE WITHOUT A LOAN OFFICER REGISTRATION REQUIRED UNDER THIS**
4 **ACT.**

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

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

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

14 (iii) A construction loan.

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

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

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

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

27 (A) The broker-dealer is registered under the uniform

1 securities act, ~~Act No. 265 of the Public Acts of 1964, being~~
2 ~~sections 451.501 to 451.818 of the Michigan Compiled Laws 1964 PA~~
3 **265, MCL 451.501 TO 451.818.**

4 (B) The broker-dealer is not an affiliate of the mortgage
5 lender unless the person acquired the broker-dealer registration,
6 directly or indirectly, before September 1, 1987 under ~~Act No. 265~~
7 ~~of the Public Acts of 1964~~ **THE UNIFORM SECURITIES ACT, 1964 PA 265,**
8 **MCL 451.501 TO 451.818,** was affiliated with a mortgage lender
9 before September 1, 1987, and has continuously maintained that
10 registration subsequent to September 1, 1987. For purposes of this
11 subparagraph, if an aggregate of more than 10% of the outstanding
12 voting stock or interest in a corporation, unincorporated
13 organization, partnership, or other legal entity that is a broker-
14 dealer or mortgage lender is sold, transferred, assigned, or
15 otherwise conveyed subsequent to September 1, 1987, the
16 registration shall be considered to not have been continuously
17 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

of more than \$50,000.00 in such loans or securities, including installment payments to be made within 1 year after purchase by the individual, has either personal income before taxes in excess of \$100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of \$1,000,000.00, and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment, or has obtained the advice of an attorney, certified public accountant, or investment adviser registered under the investment advisers act of 1940, or an investment adviser registered under ~~Act No. 265 of the Public Acts of 1964~~ **THE UNIFORM SECURITIES ACT, 1964 PA 265, MCL 451.501 TO 451.818**, with respect to the merits and risks of the prospective investment.

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

(2) If the commissioner finds that a licensee, ~~or~~ registrant, **OR LOAN OFFICER REGISTRANT** has violated this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee, registrant, **OR LOAN OFFICER REGISTRANT** or a person who controls the licensee, ~~or~~ registrant, **OR LOAN OFFICER REGISTRANT** of not more than \$1,000.00 for each violation, except that the licensee, registrant, **OR LOAN OFFICER REGISTRANT** or ~~a~~ **THE** person shall not be fined more than

1 \$10,000.00 for a transaction resulting in more than 1 violation,
2 plus the costs of investigation.

3 (b) Suspend or revoke a license, ~~or~~ registration, **OR LOAN**
4 **OFFICER REGISTRATION** or refuse to issue a license or renew a
5 license, ~~or~~ registration, **OR LOAN OFFICER REGISTRANT**.

6 (c) Require the licensee, ~~or~~ registrant, **OR LOAN OFFICER**
7 **REGISTRANT** or a person who controls the licensee, ~~or~~ registrant, **OR**
8 **LOAN OFFICER REGISTRANT** to make restitution to each injured
9 individual, if the commissioner finds that the violation of this
10 act or a rule promulgated under this act resulted in an injury to 1
11 or more individuals.

12 (3) A civil fine assessed under subsection (2) may be sued for
13 and recovered by and in the name of the commissioner and may be
14 collected and enforced by summary proceedings by the attorney
15 general. Each individual injured by a violation of this act or a
16 rule shall constitute a separate violation. In determining under
17 subsection (2) the amount of a fine, whether to suspend or revoke a
18 license, ~~or~~ registration, **OR LOAN OFFICER REGISTRATION**, whether to
19 refuse to issue or renew a license **OR LOAN OFFICER REGISTRATION**, or
20 the amount of restitution, the commissioner shall consider the
21 extent to which the violation was a knowing and willful violation,
22 the extent of the injury suffered because of the violation, the
23 corrective action taken by the licensee, ~~or~~ registrant, **OR LOAN**
24 **OFFICER REGISTRANT** to ensure that the violation will not be
25 repeated, and the record of the licensee, ~~or~~ registrant, **OR LOAN**
26 **OFFICER REGISTRANT** in complying with this act. Any proceedings
27 under this subsection ~~shall be~~ **ARE** subject to the procedures of the

1 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
2 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
3 ~~Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328.~~

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

8 Enacting section 1. This amendatory act does not take effect
9 unless all of the following bills of the 94th Legislature are
10 enacted into law:

11 (a) Senate Bill No. 828.

12
13 (b) Senate Bill No. 826.

14
15 (c) House Bill No. 5288.

16
17 (d) Senate Bill No. 829.

18
19 (e) House Bill No. 5289.

20
21 (f) Senate Bill No. 830.

22
23 (g) Senate Bill No. 831.

24
25 (h) House Bill No. 5287.

26
27 (i) House Bill No. 5290.

1

2 (j) House Bill No. 5291.

3

4 (k) Senate Bill No. 832.

5