

Chapter 493

REGULATORY LOANS

REGULATORY LOAN ACT

Act 21 of 1939

AN ACT to define and regulate the business of making regulatory loans; to permit the licensing of persons engaged in that business; to provide for the administration of this act and for the promulgation of rules; and to prescribe penalties.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 130, Eff. Oct. 11, 1947 ;-- Am. 1963, Act 103, Eff. Sept. 6, 1963 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1980, Act 392, Eff. Mar. 31, 1981 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

The People of the State of Michigan enact:

493.1 Short title; definitions.

Sec. 1.

(1) This act shall be known and may be cited as the "regulatory loan act".

(2) As used in this act:

(a) "Advertising" means publishing or broadcasting, or causing to be published or broadcast, material that has been prepared for public distribution by means of newspapers, magazines, or electronic media. Advertising does not include a stockholder communication, such as an annual report, interim financial report, registration statement, security, prospectus, application for listing a security on a stock exchange, or proxy materials. Advertising does not include a communication addressed to a person who has previously executed a loan agreement relative to that person's account.

(b) "Assets" means liquid assets, collectible loans made in accordance with this act, and personal property acquired in the general conduct of business transacted under this act.

(c) "Commissioner" means the commissioner of the office of financial and insurance services in the department of consumer and industry services.

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

(e) "Executive officer" means an officer, member, or partner of a licensee, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.

(f) "Financial licensing act" means any act listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(g) "License" means a single license issued to a single place of business.

(h) "Licensee" means a person licensed or required to be licensed under this act.

(i) "Liquid assets" means cash, unrestricted deposits in banks, and readily marketable securities at their then market value.

(j) "Loan" or "regulatory loan" means a loan made by a licensee to an individual for personal, family, or household use.

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

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 130, Eff. Oct. 11, 1947 ;-- CL 1948, 493.1 ;-- Am. 1963, Act 103, Eff. Sept. 6, 1963 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1988, Act 162, Eff. Sept. 1, 1988 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1995, Act 165, Eff. Mar. 28, 1996 ;-- Am. 1996, Act 184, Imd. Eff. May 3, 1996 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002 ;-- Am. 2002, Act 393, Imd. Eff. May 30, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.1a Repealed. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's Notes: The repealed section pertained to short title.

493.2 Business of making loans; license required; application for license; oath; form and contents; fees; proof of net worth.

Sec. 2.

(1) Except as otherwise provided under this act, a person shall not engage in the business of making loans of money, credit, goods, or things in action and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the lender were not a licensee under this act and without first obtaining a license from the commissioner, or by obtaining a license under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(2) Application for a license shall be in writing, under oath, and in the form prescribed by the commissioner, and contain the name and the address, both of the residence and place of business, of the applicant, if the applicant is a copartnership or association, of every member, and if a corporation, of each officer and director. The application shall also include the address where the business is to be conducted and all other relevant information as the commissioner may require. The applicant at the time of making the application shall pay to the commissioner an investigation and annual operating fee as provided by this act.

(3) An applicant shall prove, in form satisfactory to the commissioner, that the applicant has available net worth of at least \$100,000.00 for the operation of the business at the location specified in the application.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.2 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1992, Act 71, Imd. Eff. June 2, 1992 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.3 Licenses; bond of applicant; approval; conditions.

Sec. 3.

The applicant, at the time of filing an application, shall also file when requested by the commissioner a bond in an amount to be approved by the commissioner, in which the applicant shall be the obligor. The surety company issuing the bond shall be qualified, able, and willing to write bonds required by this act. The bond shall run to the people of the state of Michigan and may be sued on by the state or any person who may have a cause of action against the obligor. The bond shall be conditioned that the obligor will comply with this act and all rules and regulations made under this act, and will pay to the state and to any person all money due or owing to the state or to the person from the obligor.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 130, Eff. Oct. 11, 1947 ;-- CL 1948, 493.3 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.4 Investigation; findings; issuance or denial of license; notice; transcript of decision and findings.

Sec. 4.

(1) Upon the filing of the application, the payment of the fees, and the approval of the bond, the commissioner shall investigate the applicant and if he or she finds that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this act and that the applicant has a net worth in the amounts required under section 2, the commissioner shall issue a license to the applicant to conduct business at the location or locations specified in the application. The license shall remain in effect until it is surrendered by the licensee or revoked or suspended as provided under this act.

(2) If the commissioner finds that the applicant fails to meet the requirements of this act, he or she shall not issue a license and shall notify the applicant of the denial and return to the applicant the bond and fee paid by the applicant, retaining the investigation fee to cover the costs of investigating the application.

(3) The commissioner shall approve or deny every application for license within 60 days from the date that the application was filed with the fees and the approved bond.

(4) If the application is denied, the commissioner shall within 20 days from the date of denial file with the office of financial and insurance services a written transcript of the decision and findings containing the evidence and the reasons supporting the denial and shall serve upon the applicant a copy of the filing.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.4 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.5 Licenses; contents; posting; transfer; assignment.

Sec. 5.

(1) Except as otherwise provided under this section, the license shall state the address at which the principal office of the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members, and if a corporation, the date and place of its incorporation.

(2) The license shall be kept conspicuously posted in the places of business specified in the license.

(3) The license is not transferable or assignable without the prior approval of the commissioner.

(4) The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee that is a corporation, or more than 25% of the interest in a licensee that is a partnership or other unincorporated legal entity, shall be considered to be a transfer of the license.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.5 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.6 Net worth; additional bond; filing.

Sec. 6.

(1) Every licensee shall maintain at all times net worth in the amount required under section 2.

(2) If the commissioner determines at any time that any bond is insecure, exhausted, or otherwise of doubtful validity or collectability, the commissioner may require the licensee to obtain an additional bond in an amount of not more than \$1,000.00. The licensee shall file the new bond within 10 days after the commissioner has issued written demand upon the licensee.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.6 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

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financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.7 Changing name or place of business; procedure; activities at more than 1 place of business; ceasing to engage in activities subject to act.

Sec. 7.

(1) A licensee under this act may change its name or place of business shown on the license by giving prior written notice to the commissioner and returning the license to the commissioner. The commissioner shall amend the license certificate to show the new name or the new place of business and the date of the new certificate.

(2) A licensee may engage in activities for which a license is required at more than 1 place of business by providing not less than 30 days' written notice to the commissioner before opening each additional place of business. This subsection does not apply to any place of business listed in the licensee's approved application for licensure.

(3) A licensee that ceases engaging in business activities that are subject to this act at a place of business shall provide written notice to the commissioner within 30 days.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.7 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1992, Act 71, Imd. Eff. June 2, 1992 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.8 Annual establishment of fees schedule; bond; action for recovery of fees or penalties; fees nonrefundable; report; disposition and use of money received.

Sec. 8.

(1) The commissioner shall annually establish the schedule of fees sufficient to pay the costs of administering this act. The fees are as follows:

(a) For the investigation of an applicant for a license, not less than \$250.00 or more than \$1,000.00, which is not refundable.

(b) For the issuance or annual renewal of a license, an annual operating fee based upon the volume and types of activities conducted by the licensee during the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under section 11.

(c) For amending a license, not less than \$50.00 or more than \$100.00.

(2) At the time of paying the annual operating fee, each licensee shall file with the commissioner a bond as required by section 3.

(3) If any fees or penalties provided for in this act are not paid when required, the commissioner may maintain an action against the delinquent licensee for the recovery of the fees or penalties together with interest and costs.

(4) Except as otherwise provided by this act, the fees received under this act are not refundable.

(5) A licensee who fails to submit to the commissioner a report required under section 11 is subject to a penalty of \$50.00 for each day the report is delinquent or \$5,000.00, whichever is less.

(6) Money received under this act shall be paid into the state treasury to the credit of the office of financial and insurance services and shall be used for the operation of the office of financial and insurance services.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.8 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1992, Act 71, Imd. Eff. June 2, 1992 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.9 Revocation, suspension, or surrender of license; reinstatement or issuance of new license; transcript of order.

Sec. 9.

(1) The commissioner, upon 10 days' written notice to the licensee stating the contemplated action and the grounds for the action, and upon reasonable opportunity to be heard, may revoke any license if he or she finds any of the following:

(a) The licensee has failed, after 5 days' written notice of default, to pay the annual operating fee, to maintain the bond required under this act, or to comply with any demand, ruling, or requirement of the commissioner made under this act.

(b) The licensee either knowingly or without the exercise of due care has violated any provision of this act or any rule made by the commissioner under this act.

(c) Any fact or condition that exists which, if it had existed at the time of the original application for the license, would have warranted the commissioner in refusing originally to issue the license.

(2) If the commissioner finds that probable cause for revocation of any license exists and that the enforcement of the act requires immediate suspension of the license pending investigation, he or she may, upon 3 days' written notice and a hearing, suspend any license for a period not exceeding 30 days.

(3) A licensee may surrender its license by delivering to the commissioner written notice that it surrenders the license. The surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

(4) A revocation or suspension or surrender of a license does not impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(5) The commissioner shall have authority to reinstate suspended licenses or to issue new licenses to a licensee whose license shall have been revoked if no fact or condition exists that clearly would have warranted the commissioner in refusing originally to issue the license.

(6) If the commissioner revokes or suspends a license, he or she shall file with the office of financial and insurance services a written transcript of the order containing the evidence and the reasons supporting the revocation or suspension, and serve upon the licensee a copy of the transcript.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.9 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

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493.9a Cease and desist order; grounds; notice; failure to appear at hearing; findings; effective date and duration of order.

Sec. 9a.

(1) If in the opinion of the commissioner a licensee is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare or is, has, or is about to violate a law or rule, the commissioner may serve a notice of intention to issue a cease and desist order as provided in subsection (2).

(2) A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation and fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee.

(3) If the licensee fails to appear at the hearing by a duly authorized representative, the licensee shall have consented to the issuance of the cease and desist order.

(4) In the event of consent under subsection (3) or if, upon the record made at the hearing, the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee an order to cease and desist from the practice or violation. The order may require the licensee and its officers, directors, members, partners, trustees, employees, agents, and control persons to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(5) Except as provided in subsection (6) or to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order shall become effective on the date of service.

(6) A cease and desist order issued upon consent shall become effective at the time specified in the order and remain effective and enforceable as provided in the order.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002

493.9b Investigation or examination by commissioner; complaint or action; suspension of license; request for hearing; duration of suspension.

Sec. 9b.

(1) As provided in section 10, the commissioner may investigate or conduct an examination of any person and conduct hearings as the commissioner considers necessary to determine whether a licensee or any other person has violated this act, or whether a licensee has conducted business in a manner that would justify suspension or revocation of its license.

(2) Upon the filing of a complaint or the taking of action against a licensee under section 9c, the commissioner may issue and serve upon a licensee an order suspending that person's license. The order shall be supported by an affidavit from a person familiar with the facts set forth in the affidavit and shall contain information that an imminent threat of financial loss or threat to the public welfare exists.

(3) Upon service of the order under subsection (2), the licensee shall have 20 days to file with the commissioner a request for a hearing. The hearing shall be scheduled within 20 days of the receipt of a request filed under this subsection.

(4) A suspension of a license under this section shall continue until the commissioner finds that the threat of financial loss or threat to the public welfare no longer exists.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002

493.9c Fraud.

Sec. 9c.

(1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for loans, mortgage loans, secondary mortgage loans, credit card arrangements, or installment sales credit, borrowers on loans, obligors on installment sale contracts, loan servicing customers, purchasers of mortgage loans or interests in mortgage loans, or purchasers of checks from a licensee, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) the commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or control person.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002

493.9d Hearing; decision; findings; judicial review; stay.

Sec. 9d.

(1) A hearing under sections 9, 9a, and 9c shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding or a person affected by an order issued under sections 9, 9a, and 9c may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002

493.9e Enforcement of order; jurisdiction.

Sec. 9e.

The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 9, 9a, 9b, or 9c.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002

493.9f Violation as misdemeanor; penalty.

Sec. 9f.

Any current or former executive officer, director, agent, or control person who violates a final order issued under section 9c is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002

493.9g Violation of order; exceptions.

Sec. 9g.

A control person who is subject to an order issued under section 9c and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee to an unrelated third party.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002

493.10 Commissioner of state banking department; authority to investigate business and examine records; witnesses; examination of licensee; construction of section; disposition of fees.

Sec. 10.

(1) For the purpose of investigating violations of this act or securing information lawfully required under this act, the commissioner may at any time, either personally or by a designated person or persons, investigate the loans and business and examine the books, accounts, records, and files used with the loans and business of any licensee or any person engaged in the business described in section 2. The commissioner and his or her duly designated representatives shall have and be given free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all persons investigated under this section. The commissioner and persons duly designated by him or her have the authority to require the attendance of and to examine under oath all persons whose testimony the commissioner may require relative to the loans or business or to the subject matter of an examination, investigation, or hearing.

(2) The commissioner at any time may investigate the business activities of a licensee as the commissioner considers necessary, examine the books, accounts, records, and files used and maintained by any licensee, and require the licensee to furnish additional reports relating to the licensee's business. The commissioner shall examine the books, accounts, records, and files of a licensee at least once during every 5-year period.

(3) This act shall not be construed to prohibit the keeping of records by electronic data processing methods.

(4) All fees collected under this section shall be paid into the state treasury and credited to the office of financial and insurance services.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.10 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1996, Act 184, Imd. Eff. May 3, 1996 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.11 Books, accounts, and records of licensee; preservation and accessibility; filing financial statement with commissioner; reports.

Sec. 11.

(1) The licensee shall keep and use in the licensee's business the books, accounts, and records the commissioner may require in order to determine whether the licensee is complying with this act and with the rules promulgated by the commissioner under this act. The licensee shall preserve within this state and make accessible to the commissioner, the books, accounts, and records for at least 2 years after making the final entry on any loan recorded in the books, accounts, and records. Books and accounts may be kept at a location other than the

licensee's principal place of business, provided that they are made available to the commissioner upon request and the licensee pays the actual and reasonable travel expenses if the examiner must travel out of state.

(2) The licensee shall file, annually on or before February 15 of each year, with the commissioner its financial statement in a uniform format prescribed by the commissioner, including information on earnings, for the prior calendar year.

(3) A licensee shall annually on or before a date established by the commissioner file with the commissioner a report, on a form provided by the commissioner, stating the licensee's volume and type of business activities for the immediately preceding calendar year. The commissioner shall provide at least 30 days' advance notice of the date each report is due.

(4) All reports shall be made under oath and shall be in the form prescribed by the commissioner.

(5) The commissioner shall make and publish annually an analysis and recapitulation of the reports filed under subsections (2) and (3).

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.11 ;-- Am. 1983, Act 103, Imd. Eff. June 30, 1983 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.12 Statements or representations by licensee; lien on real estate; confession of judgment or power of attorney prohibited; note or evidence of indebtedness; blanks; discrimination on basis of sex or marital status prohibited; knowingly permitting person to violate order; fee; conditions.

Sec. 12.

(1) A licensee or other person shall not advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever a false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action.

(2) A licensee shall not take a lien on real estate as security for a loan made under this act, except a lien acquired by execution or otherwise after the entry of a judgment.

(3) A licensee shall not take a confession of judgment or a power of attorney to appear or to confess judgment on behalf of a borrower. A licensee shall not take a note or evidence of indebtedness that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, or an instrument in which blanks are left to be filled in after execution.

(4) A licensee shall not discriminate against an individual in the extension of credit on the basis of sex or marital status.

(5) Except as provided under section 9g, a licensee shall not knowingly permit a person to violate an order that is issued under this act or any other financial licensing act that prohibits that individual from being employed by, an agent of, or a control person of the licensee.

(6) A licensee shall not pay a person a fee for locating a potential borrower for the licensee or introducing or referring a potential borrower to the licensee unless both of the following are met:

(a) The potential borrower is not directly or indirectly charged for all or any part of the fee if he or she enters into a loan with the licensee.

(b) The amount of the fee does not exceed \$500.00.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 130, Eff. Oct. 11, 1947 ;-- CL 1948, 493.12 ;-- Am. 1963, Act 103, Eff. Sept. 6, 1963 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002 ;-- Am. 2002, Act 393, Imd. Eff. May 30, 2002 ;-- Am. 2017, Act 171, Eff. Feb. 19, 2018

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.12a False, misleading, deceptive, or irresponsible advertising unlawful; definition; requirements for advertising.

Sec. 12a.

(1) False, misleading, deceptive, or irresponsible advertising is unlawful and is defined as follows:

(a) Advertising which lures, entices, induces, or tends to induce a person to incur a debt by unreasonably minimizing the consequences of assuming a legal repayment obligation or by depicting the assumption of a debt obligation as a frivolous transaction.

(b) Advertising that describes or depicts the benefits or advantages of having the money from a loan, without describing or depicting the obligation of repaying the loan with interest.

(c) Advertising with claims and representations that are not accurate or provable.

(d) Advertising which misrepresents facts or creates misleading impressions.

(e) Advertising which uses the phrase "lowest rates", "lowest rates in the city", or similar phrases unless the rates are actually lower than those of other lenders.

(f) Advertising which uses the phrase "new reduced rates", "new low rates", "reduced rates", or similar phrases for more than 60 days after the changed rates become effective.

(g) Advertising which causes a probability of confusion or misunderstanding as to the legal rights, obligations, or remedies of a lender, or as to the terms or conditions of credit.

(h) Advertising which represents that a borrower will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(i) Advertising which suggests or infers that a loan is not a loan, or that interest is not charged, or that the borrower is not under an obligation to repay.

(2) A licensee shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions, to applicants who meet the standards or qualifications prescribed.

History: Add. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.12b Repealed. 1991, Act 14, Eff. Oct. 1, 1991.

Compiler's Notes: The repealed section pertained to licensee promotional plans.

493.12c False, misleading, deceptive, or irresponsible advertising; report to attorney general; action to restrain by temporary or permanent injunction; costs; civil penalty; notice to licensee; assurance of discontinuance; violation subject to civil penalty; jurisdiction, continuance of cause, and petition for recovery of civil penalty; effect of action or failure to act by commissioner.

Sec. 12c.

(1) If the commissioner has probable cause to believe that a licensee has engaged, is engaged, or is about to engage in advertising that is false, misleading, deceptive, or irresponsible as defined in section 12a, and upon notice given in accordance with this section, the commissioner shall report the matter to the attorney general. The attorney general or the commissioner may bring an action to restrain the licensee by temporary or permanent injunction from engaging in the advertising. The action may be brought in the circuit court for the county where the licensee is established or conducts business or in the circuit court for Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 12a the court may assess the defendant a civil penalty of not more than \$5,000.00.

(2) Unless waived by the court on good cause shown, not less than 10 days before the commencement of a proceeding under this section the commissioner shall notify the licensee of the intended referral to the attorney general and provide the licensee an opportunity to cease and desist from the alleged unlawful advertising or to confer with the commissioner in person, by counsel, or by other representative as to the proposed action before the proposed filing date.

(3) Service of the notice may be given to the licensee by mail, postage prepaid, to the licensee's usual place of business or, with respect to a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

(4) If the commissioner has authority to institute a proceeding under this section, the commissioner, upon the concurrence of the attorney general, may accept an assurance of discontinuance of advertising that is alleged to be unlawful under section 12a from the person who is alleged to have engaged, be engaging, or be about to engage in the advertising. The assurance does not constitute an admission of guilt nor can it be introduced in any other proceeding. An assurance of discontinuance shall be in writing and filed with the circuit court for Ingham county. The clerk of the court shall maintain a record of the filings. Unless rescinded by the parties or voided by the court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. The assurance may be modified by the parties or by the court for good cause.

(5) A person who knowingly violates the terms of an injunction, order, decree, or judgment issued under this section is subject to a civil penalty of not more than \$500.00 for each violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, and the cause shall be continued. The attorney general or the commissioner may petition for recovery of a civil penalty as provided by this section.

(6) The action or the failure to act by the commissioner under this section shall not be considered specific authorization of conduct barring the attorney general from bringing an action under the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922.

History: Add. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1992, Act 71, Imd. Eff. June 2, 1992 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.12d Action to enjoin licensee from advertising; circuit court.

Sec. 12d.

A person may bring an action in the circuit court of the county in which an office of a licensee is located, or in the circuit court for Ingham county, to enjoin a licensee from advertising in violation of section 12a.

History: Add. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.13 Limitation on amount of loan and interest charge; obligation under more than 1 loan contract; computation and payment of charges; loan processing fee; fees; amount other than or in excess of charges permitted by act; penalties; "open-end credit" defined.

Sec. 13.

(1) A licensee may lend money and may contract for, compute, and receive interest charges on the loan at a rate that does not exceed the rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. A loan by a licensee may be 1 of the following:

(a) A closed-end loan.

(b) Open-end credit consisting of direct advances from the licensee or checks issued by the licensee. This subdivision does not apply to open-end credit available through the use of a credit card or charge card.

(2) A licensee shall not induce a person to become directly obligated under more than 1 loan contract not secured by personal property at the same time.

(3) Charges on loans made under this act shall not be paid, deducted, or received in advance, or compounded. All charges on loans made under this act shall be computed on the unpaid principal balance or portions of the balance, specifically expressed in every obligation signed by the borrower, and computed on the basis of the number of days actually elapsed.

(4) In addition to the interest and charges provided for in this act, a loan processing fee not to exceed 5% of the principal, up to \$250.00, may be charged for each closed-end loan made, and may be included in the principal of the loan. The \$250.00 limit on the loan processing fee shall be adjusted every 2 years to reflect the percentage change in the United States consumer price index for the 2 immediately preceding calendar years, rounded to the nearest hundred dollars. As used in this subsection, "United States consumer price index" means the United States consumer price index for all urban consumers in the United States city average, as defined and reported by the United States department of labor, bureau of labor statistics, and after certification by the commissioner. A licensee may require the borrower to pay the late charges permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. A licensee shall not induce or permit a person to become obligated, directly or contingently, under more than 1 loan contract not secured by personal property at the same time for the purpose or with the result of obtaining a loan processing fee not otherwise permitted by this section. No other amount shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid by the licensee to a governmental entity for the filing, recording, or releasing of either of the following:

(a) A financing statement or an instrument securing the loan, or both.

(b) A record noting or releasing a lien or transferring a certificate of title under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(5) The fees permitted under this section may be collected at any time on or after the date the loan is made.

(6) A licensee may charge a handling fee for the return of an unpaid and dishonored check, draft, negotiable order, or similar instrument given to the licensee in full or partial repayment of a loan as authorized by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(7) A licensee may recover from the borrower the costs and expenses of retaking, holding, repairing, preparing for sale, and selling any personal property in accordance with sections 9609 and 9615 of the uniform commercial code, 1962 PA 174, MCL 440.9609 and 440.9615.

(8) A licensee may charge a reasonable annual fee for the privilege of receiving open-end credit from the licensee.

(9) A licensee may charge a reasonable fee per payment if a borrower makes a payment or payments by authorizing a licensee verbally or in writing to execute a debit or otherwise process a payment, through automated clearing procedures, drawn on the borrower's deposit account. This subsection shall not be construed to permit the imposition of a fee in cases where the borrower, at the time of consummation of the loan, authorizes the licensee to effect all periodic installment payments by way of electronic automated clearing procedures drawn on the borrower's deposit account.

(10) In addition to the penalties provided by this act, a violation of this act with respect to a particular regulatory loan transaction is also subject to the penalty and remedy provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(11) As used in this section, "open-end credit" means credit that is not secured by an interest in real property and is extended under a plan in which both of the following apply:

(a) The licensee reasonably contemplates repeated transactions.

(b) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 130, Eff. Oct. 11, 1947 ;-- CL 1948, 493.13 ;-- Am. 1963, Act 103, Eff. Sept. 6, 1963 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1994, Act 142, Imd. Eff. May 27, 1994 ;-- Am. 1995, Act 165, Eff. Mar. 28, 1996 ;-- Am. 1996, Act 184, Imd. Eff. May 3, 1996 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.13a Credit life insurance; other insurance.

Sec. 13a.

(1) In addition to charges allowed under section 13, at the option of the borrower, a licensee may obtain or provide 1 or both of the following and deduct from the principal of a loan and retain an amount equal to the premium lawfully charged by the insurance company:

(a) Credit insurance as defined in the credit insurance act, 1958 PA 173, MCL 550.601 to 550.624.

(b) Any other insurance under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(2) The insurance permitted by this section shall be in force when the loan is made. If the borrower obtains the

insurance from or through a licensee, the statement required by section 14 shall show the cost of the insurance and the licensee shall provide to the borrower a copy of the policy, certificate, or other evidence of the insurance. This act does not prohibit the licensee or any employee, affiliate, subsidiary, or associate of the licensee from collecting the premium or identifiable charge for the insurance permitted by this section or from receiving and retaining any gain or other benefit resulting from the insurance. A licensee shall not require the purchase of insurance as a condition precedent to the making of a loan.

History: Add. 1963, Act 103, Eff. Sept. 6, 1963 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1994, Act 407, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 184, Imd. Eff. May 3, 1996 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.14 Licensee; duties.

Sec. 14.

A licensee shall:

- (a) Deliver to the borrower a disclosure statement in compliance with 12 C.F.R. part 226.
- (b) Give to the borrower a plain and complete receipt for cash payments made on account of a loan at the time the payments are made, specifying the amount applied to charges and the amount, if any, applied to principal, and stating the unpaid principal balance of the loan. An unitemized receipt may be given temporarily and within 30 days a receipt as prescribed above delivered or mailed.
- (c) Permit payment to be made in advance in any amount on any contract of loan at any time during regular business hours, but the licensee may apply that payment first to all charges in full at the agreed rate up to the date of the payment.
- (d) Upon repayment of the loan in full, mark plainly every obligation and security signed by the borrower with the word "Paid" or "Canceled", and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.14 ;-- Am. 1963, Act 103, Eff. Sept. 6, 1963 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.14a Compliance with federal consumer credit protection act.

Sec. 14a.

Compliance with the requirements of the consumer credit protection act, Public Law 90-321, 82 statute 146, commonly referred to as the federal truth in lending act is compliance with section 12 as to advertising, section 13a as to cost of insurance, and section 14.

History: Add. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.15 Contract in compliance with retail installment sales act or home improvement finance act.

Sec. 15.

A licensee may purchase a contract made in compliance with the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873, or the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 130, Eff. Oct. 11, 1947 ;-- CL 1948, 493.15 ;-- Am. 1963, Act 103, Eff. Sept. 6, 1963 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.15a Regulatory loan contract; nonperformance by borrower; advances by licensee; termination of insurance upon reinstatement of contractual duties by borrower.

Sec. 15a.

(1) If a regulatory loan contract contains obligations by the borrower to perform certain duties pertaining to insuring or preserving collateral and the licensee, because of the borrower's failure to perform these duties, pays for performance of the duties on behalf of the borrower, the licensee may add the amounts paid to the debt and collect interest at the contract rate on the amounts.

(2) Within 30 days after advancing any sums under this section, the licensee shall notify the borrower in writing of the amount of the sums advanced, any charges with respect to this amount, any revised payment schedule, and a brief description of the services or products paid for by the licensee, including the type and amount of insurance coverages, if applicable.

(3) The licensee shall promptly terminate insurance or other services procured under this section once the borrower provides evidence that the performance of contractual duties have been reinstated.

History: Add. 2001, Act 270, Imd. Eff. Jan. 11, 2002

493.16 Repealed. 1978, Act 528, Eff. Mar. 30, 1979.

Compiler's Notes: The repealed section pertained to sale or assignment of wages as loans.

493.17 Assignment or order for payment of compensation to secure loan invalid; validity of chattel mortgage or lien on household goods; married borrower; signatures; written assent of spouse.

Sec. 17.

(1) An assignment of, or order for payment of, salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure a loan made by a licensee under this act, shall not be valid. A chattel mortgage or other lien on household goods then in the possession and use of the borrower shall not be valid unless it is in writing and signed in person by the borrower.

(2) If the borrower is married, a chattel mortgage or other lien on household goods shall not be valid unless it is signed in person by both husband and wife. The written assent of a spouse under this section shall not be required when husband and wife have been living separate and apart for a period of not less than 5 months before the making of the chattel mortgage or other lien.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.17 ;-- Am. 1980, Act 392, Eff. Mar. 31, 1981 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the

commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.18 Unlicensed persons; limitation on interest, discount, or consideration; applicability of act to loans made in another state or country.

Sec. 18.

(1) A person, except as authorized by this act, shall not directly or indirectly charge, contract for, or receive an interest, discount, or consideration greater than the lender would be permitted by law to charge if the lender were not licensed under this act upon the loan, use, or forbearance of money, goods, or things in action.

(2) The prohibition specified in subsection (1) applies to a person who or which, by any device, subterfuge, or pretense charges, contracts for, or receives greater interest, consideration, or charges than authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

(3) This act does not apply to loans legally made in another state or country by a licensee under a regulatory loan law similar in principle to this act, except that loans made by mail to Michigan residents are subject to this act.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- Am. 1947, Act 130, Eff. Oct. 11, 1947 ;-- CL 1948, 493.18 ;-- Am. 1963, Act 103, Eff. Sept. 6, 1963 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1995, Act 165, Eff. Mar. 28, 1996 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.19 Violation as misdemeanor; penalty.

Sec. 19.

(1) A person, including a member, officer, director, agent, or employee of a licensee, who violates or participates in the violation of section 1, 12, 13, 14, or 18 is guilty of a misdemeanor punishable by a fine of not more than \$500.00, or imprisonment for not more than 6 months, or both.

(2) A person who makes or collects upon a loan contract in a manner prohibited by this act is guilty of a misdemeanor under section and is subject to the credit reform act.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.19 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1995, Act 165, Eff. Mar. 28, 1996

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.20 Businesses exempt from act.

Sec. 20.

This act shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, industrial banks, trust companies, building and loan associations, or credit unions, nor to any business transacted under any pawnbroker's license.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.20

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.21 Enforcement of act; rules.

Sec. 21.

The commissioner may promulgate rules that are necessary for the administration and enforcement of this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.21 ;-- Am. 1971, Act 168, Eff. Mar. 30, 1972 ;-- Am. 1978, Act 528, Eff. Mar. 30, 1979 ;-- Am. 1991, Act 14, Eff. Oct. 1, 1991 ;-- Am. 1992, Act 71, Imd. Eff. June 2, 1992 ;-- Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Admin Rule: R 493.1 et seq. of the Michigan Administrative Code.

493.22 Amendments or repeals of act; impairment of obligation.

Sec. 22.

This act or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.22

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.23 Repealed. 1991, Act 14, Eff. Oct. 1, 1991.

Compiler's Notes: The repealed section pertained to licensees under former act.

493.24 Review of decisions and regulations; limitations; method; jurisdiction of courts.

Sec. 24.

Any applicant under section 4 of this act or any licensee, being dissatisfied with any rule, regulation, order, demand, ruling, or finding (hereinafter in this section referred to as an order) whatsoever, made by the commissioner under and by virtue of the provisions of this act, may, within 30 days from the issuance of such order and the giving of notice thereof as required herein, commence an action in the circuit court in chancery for the county of Ingham, or in the chancery court of the county in which is located the place of business of such licensee or applicant concerning which such rule, regulation, order, demand, ruling or finding was made, against the commissioner as defendant to vacate and set aside such order on the ground that the same is unlawful or unreasonable or not correct as to the facts, or that any regulation or practice fixed in such order is unlawful or unreasonable. In such action the trial shall be de novo and the court shall not be bound by any finding of fact or law on the part of the commissioner, and the burden of proof shall be on the commissioner. The same shall proceed, be tried and determined as other chancery suits and appeal therefrom may be taken by any party to the supreme court in the same manner as from other chancery suits. Any party to such suit may introduce original evidence in addition

to the transcript of evidence taken before the commissioner. The said circuit court in chancery is hereby given jurisdiction of such suits and empowered to affirm, modify, vacate, or set aside the order of the commissioner in whole or in part and to make such other order or decree as the court shall decide to be proper and in accordance with the facts and the law. In all actions and proceedings in court arising under this section of this act, all process shall be served and the practice and rules of evidence shall be the same as in actions in equity except as otherwise herein provided.

History: 1939, Act 21, Eff. Sept. 29, 1939 ;-- CL 1948, 493.24

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.25 Repealed. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's Notes: The repealed section pertained to certified copy of order as evidence.

493.26 Repealed. 1991, Act 14, Eff. Oct. 1, 1991.

Compiler's Notes: The repealed section contained a repealer and saving clause.

THE SECONDARY MORTGAGE LOAN ACT

Act 125 of 1981

AN ACT to regulate secondary mortgage loans; to regulate secondary mortgage brokers, lenders, and servicers; to prescribe powers and duties of certain state agencies and officials; to require certain fees; to provide for the establishment of a revolving fund; to provide for the promulgation of rules; and to provide remedies and prescribe penalties.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1988, Act 444, Imd. Eff. Dec. 27, 1988 ;-- Am. 1989, Act 66, Imd. Eff. June 16, 1989 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Popular Name: Secondary Mortgage Loan Act

The People of the State of Michigan enact:

493.51 Short title; definitions.

Sec. 1.

- (1) This act shall be known and may be cited as "the secondary mortgage loan act".
- (2) As used in this act:
 - (a) "Broker" means a person who, directly or indirectly, does 1 or both of the following:
 - (i) Serves or offers to serve as an agent for a person attempting to obtain a secondary mortgage loan.
 - (ii) Serves or offers to serve as an agent for a person who makes or offers to make a secondary mortgage loan.
 - (b) "Commissioner" means the commissioner of the office of financial and insurance regulation of the department of energy, labor, and economic growth or his or her authorized representatives.

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

(d) "Depository financial institution" means a state or nationally chartered bank, state or federal chartered savings and loan association, savings bank, or credit union, or any other institution whose deposits are insured by an agency of the federal government.

(e) "Employee" means an individual who meets both of the following:

(i) Has an employment relationship acknowledged by that individual and the licensee or registrant that engages that individual to originate secondary mortgage loans.

(ii) Is treated as an employee by the licensee or registrant that engages that individual to originate secondary mortgage loans for compliance with federal income tax laws.

(f) "Executive officer" means an officer, member, or partner of a licensee or registrant. The term includes the chief executive officer, president, vice president, chief financial officer, controller, or compliance officer, or an individual holding any other similar position.

(g) "Financial licensing act" means any of the financial licensing acts, as that term is defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(h) "Lender" means a person who, directly or indirectly, makes or offers to make secondary mortgage loans.

(i) "Licensed secondary mortgage loan officer" means a secondary mortgage loan officer who is licensed as a mortgage loan originator under the mortgage loan originator licensing act.

(j) "Licensee" means a person licensed or required to be licensed under this act.

(k) "Loan servicing customer" means a mortgagor whose secondary mortgage loan is being serviced by a servicer.

(l) "Open-end credit" means credit extended under a plan in which both of the following apply:

(i) The licensee or registrant reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

(m) "Originate" means any of the following:

(i) To negotiate, arrange, or offer to negotiate or arrange a secondary mortgage loan between a lender and 1 or more individuals.

(ii) To place, assist in placing, or find a secondary mortgage loan for 1 or more individuals.

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

(o) "Registrant" means a person that is registered or required to register as a broker, lender, or servicer under this act. The term does not include a depository financial institution.

(p) "Secondary mortgage loan" means a loan that has a term of 90 days or more; that is made to a person for personal, family, or household purposes; and that is secured by a mortgage on an interest in real property that is used as a dwelling and is subject to a lien of 1 or more outstanding mortgages. A secondary mortgage loan may be secured by other collateral in addition to real property. Notwithstanding the place of execution, nominal or real, of a secondary mortgage loan, if the real property that secures the loan is located in this state, a secondary mortgage loan is subject to this act and all other applicable laws of this state.

(q) "Secondary mortgage loan officer" means an individual who is an employee or agent of a broker, lender, or servicer; who originates secondary mortgage loans; and who is not an employee or agent of a depository financial institution or a subsidiary or affiliate of a depository financial institution.

(r) "Service" means the collection or remittance for a lender, noteowner, or noteholder or a licensee's own account of 4 or more installment payments of the principal of, interest of, or an amount placed in escrow under a secondary mortgage loan, mortgage servicing agreement, or an agreement with a mortgagor.

(s) "Servicer" means a person who, directly or indirectly, services or offers to service secondary mortgage loans.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1989, Act 66, Imd. Eff. June 16, 1989 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2002, Act 392, Imd. Eff. May 30, 2002 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 14, Imd. Eff. Apr. 9, 2009 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws. For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991. For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

Popular Name: Secondary Mortgage Loan Act

493.52 Broker, lender, or servicer; license or registration required; exemption; use of name or assumed name.

Sec. 2.

(1) A person shall not act as a broker, lender, or servicer without first obtaining a license under this act or registering under section 3a, unless 1 or more of the following apply:

(a) The person is providing secondary mortgage loan officer services as an employee or agent of only 1 broker, lender, or servicer and is a licensed secondary mortgage loan officer if that registration is required under the mortgage loan originator licensing act.

(b) The person is licensed under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(c) The person acts as a lender but makes or negotiates 2 or fewer secondary mortgage loans in a calendar year.

(d) The person acts as a servicer but services 10 or fewer secondary mortgage loans in a calendar year.

(e) The person is an individual and an employee of a professional employer organization, as that term is defined in section 113 of the Michigan business tax act, 2007 PA 36, MCL 208.1113, solely acting as a secondary mortgage loan originator of only 1 broker or lender. The broker or lender shall do all of the following:

(i) Direct and control the activities of the individual under this act.

(ii) Be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under section 6.

(2) By October 31, 1997, a servicer that was exempt from regulation under this act shall either file with the commissioner an application for a license or registration under section 3 or discontinue all activities subject to this act.

(3) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, a person subject to this act shall not include in its name or assumed name the words "bank", "banker", "banc", "bankcorp", "bancorp", or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee to use the term "mortgage banker" or "mortgage banking" in its name or assumed name.

(4) A person subject to this act whose name or assumed name on January 1, 1997 contained a word prohibited by subsection (3) may continue to use that name or assumed name.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1988, Act 164, Eff. Sept. 1, 1988 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2007, Act 46, Imd. Eff. July 17, 2007 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.52a-493.52d Repealed. 2009, Act 77, Eff. July 31, 2010.

Compiler's Notes: The repealed sections pertained to performance of services as secondary mortgage loan officer; information available to public; remuneration; registration; conditions requiring notice.

493.53 Application for license or registration; form and contents.

Sec. 3.

(1) An application for a license or registration under this act shall be in writing, under oath, and in the form prescribed by the commissioner.

(2) The application shall state the name, residence, and business addresses of the applicant, each member if the applicant is a partnership, association, or limited liability company, and of each officer, director, and stockholder if

the applicant is a corporation.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.53a Broker, lender, or servicer; registration with commissioner; form.

Sec. 3a.

The following persons shall register with the commissioner on a form prescribed by the commissioner:

(a) A broker, lender, or servicer approved as a seller or servicer by the federal national mortgage association or the federal home loan mortgage corporation.

(b) A broker, lender, or servicer approved as an issuer or servicer by the government national mortgage association.

(c) A broker, lender, or servicer that is licensed under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or a registrant under that act if the registrant is a mortgage broker, mortgage lender, or mortgage servicer approved as a seller or servicer by the federal national mortgage association or the federal home loan mortgage corporation, or a mortgage broker, mortgage lender, or mortgage servicer approved as an issuer or servicer by the government national mortgage association.

(d) A broker, lender, or servicer that is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company if the depository institution does not maintain a main office or a branch office in this state.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.54 Fees.

Sec. 4.

(1) At the time of making an application for a license, the applicant shall pay to the commissioner a fee for investigating the applicant as provided by section 6a.

(2) At the time of making an application for license or registration and annually thereafter, the applicant shall pay an annual operating fee as provided in section 6a.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.55 Investigation; issuance or refusal to issue license.

Sec. 5.

(1) Upon the filing of an application for a license and the payment of the required fees and the filing of proof of financial responsibility as the commissioner requires, the commissioner shall investigate the facts. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant for a license, and, as applicable, the applicant's shareholders, directors, officers, partners, members, and trustees command the confidence of the community and warrant the belief that the business will be operated lawfully, honestly, fairly, and efficiently as required by this act, the commissioner shall issue to the applicant a license to engage in the business of brokering, making, or servicing secondary mortgage loans under this act.

(2) For an applicant for a registration, the commissioner shall approve the application if the commissioner finds that the applicant meets any 1 of the requirements of section 3a.

(3) A license or registration issued under this section does not approve the use of, or indemnify the licensee or registrant against claims for the improper use of the business name stated in the license.

(4) The commissioner may refuse to issue a license for any reason for which the commissioner may suspend, revoke, or refuse to renew a license under section 11.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.56 License or registration; filing application or renewal; bond or letter of credit; claims filed against proof of financial responsibility; maintenance of net worth; determination; assets excluded from computation.

Sec. 6.

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

(a) Provide proof of financial responsibility in the following amounts:

(i) \$25,000.00 for a license or registration to act as a broker who receives funds from a prospective borrower before the closing of the secondary mortgage loan or who acts as a lender.

(ii) \$125,000.00 for a license or registration to act as a servicer.

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

(i) A corporate surety bond payable to the commissioner that expires no earlier than the date the license or registration expires, executed by a corporate surety approved by the commissioner.

(ii) An irrevocable letter of credit upon which the applicant for a license or registration is the obligor that expires no earlier than the date the license or registration expires, that is issued by a depository financial institution, and the terms of which are approved by the commissioner.

(2) The bond or letter of credit required under subsection (1) shall be conditioned upon the licensee or registrant conducting its business as required under this act and all the rules promulgated under this act, and the payment of all money that becomes due to borrowers, secondary mortgage loan applicants, and the commissioner.

(3) The commissioner shall prioritize and pay claims against a proof of financial responsibility filed with the commissioner under this section in a manner that, in his or her discretion, best protects the public interest.

(4) Claims may only be filed against a proof of financial responsibility filed with the commissioner under this section by the commissioner and the licensee's or registrant's borrowers, secondary mortgage loan applicants, and loan servicing customers.

(5) Claims filed against a proof of financial responsibility filed with the commissioner under this section by a borrower or loan applicant shall involve only secondary mortgage loans or secondary mortgage loan applications secured or to be secured by real property used as a dwelling located in this state. The amount of the claim shall not exceed actual fees in connection with a loan application, overcharges of principal and interest, and excess escrow collections by the licensee or registrant.

(6) The commissioner may file a claim against a proof of financial responsibility filed with the commissioner

under this section for payment of fines or fees due and payable to the commissioner and reimbursement of expenses incurred in investigating the licensee or registrant and expenses incurred in distributing proceeds of the proof of financial responsibility. A claim filed under this subsection shall be paid in full prior to payment of other claims against a proof of financial responsibility, unless the commissioner, in his or her discretion, waives in whole or in part the right to priority of payment.

(7) In the event that valid claims exceed the amount of a proof of financial responsibility filed with the commissioner under this section, each claimant shall be entitled only to a pro rata amount of his or her valid claim.

(8) A licensee that acts as a broker and that receives funds from a prospective borrower before the closing of the secondary mortgage loan shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a lender shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a servicer shall maintain a net worth of not less than \$100,000.00.

(9) Net worth under subsection (8) is determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license, or renewal of a license, is submitted to the commissioner. An applicant shall disclose its net worth on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and in accordance with generally accepted accounting principles. The following assets are excluded in the computation of net worth:

(a) That portion of an applicant's assets pledged to secure obligations of any person other than the applicant.

(b) An asset, except a construction loans receivable, secured by mortgages from related companies, due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest.

(c) An amount in excess of the lower of the cost or market value of mortgage loans in foreclosure, or real property acquired through foreclosure.

(d) An investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates that is greater than the market value of the assets.

(e) Good will or value placed on insurance renewals or property management contract renewals or other similar intangible value.

(f) Organization costs.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.56a Registration or license; expiration; renewal; filing financial statement; exemption; fees; failure to submit reports or fees; disposition of money received; "MBLSLA fund" defined; limitation on fees; annual report; additional reports; false statement as felony.

Sec. 6a.

(1) A registration or license, unless it is renewed, expires on December 31 of each year. A person may renew a registration or license by filing an application for license or registration renewal and paying the annual operating fee for the succeeding year. The application and payment shall be received by the commissioner on or before a date prescribed by the commissioner.

(2) Not later than 90 days after close of the fiscal year of a licensee or registrant, the licensee or registrant shall annually deliver to the commissioner a financial statement for the fiscal year prepared from the licensee's or registrant's books and records. At the licensee's or registrant's option, the financial statement may be any of the following:

(a) On a form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which the licensee or registrant represents to the commissioner to be true and complete.

(c) In a format prepared and certified by an independent certified public accountant licensed by a regulatory authority of any state or political subdivision of the United States.

(3) A registrant that is a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that timely files with the commissioner the financial statement required under section 7 of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1657, is exempt from the filing requirement of subsection (2).

(4) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, an applicant for a license shall pay to the commissioner a fee for investigating the applicant for a license and the annual operating fee established by the commissioner under subsection (5). To renew a license or registration that has not been suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee.

(5) If an initial license or registration described in subsection (4) will have an effective date of July 1 or later, the initial annual operating fee for that license is 1/2 of the annual operating fee.

(6) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the reasonably anticipated costs of the office of financial and insurance regulation for administering and enforcing this act. The fee schedule shall include all of the following:

(a) For the investigation of an applicant for a license, a fee of not less than \$400.00 or more than \$1,000.00.

(b) Subject to subsection (5), an annual operating fee for each licensee or registrant, based upon the number of secondary mortgage loans the licensee or registrant brokered to other parties that were closed during the previous calendar year, the number of secondary mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of secondary mortgage loans serviced by the licensee or registrant as of December 31 of the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under subsection (13).

(c) For amending or reissuing a license or registration, a fee of not less than \$15.00 or more than \$200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to examine or investigate the records of the licensee or registrant and the cost of independent investigators employed under section 6b(3)(e).

(7) Fees received under this act are not refundable.

(8) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee or registrant for the recovery of the fees and penalties together with interest and costs.

(9) A licensee or registrant that fails to submit to the commissioner the reports as required by subsections (2) and (13) is subject to a penalty of \$25.00 for each day a required report is delinquent or \$1,000.00, whichever is less.

(10) A license or registration renewal fee that is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(11) Money received from the fees described in this section shall be deposited in the MBLSLA fund. As used in this subsection, "MBLSLA fund" means the restricted account created under section 8(8) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1658.

(12) The annual operating fees set by the commissioner shall not exceed the levels needed to cover the estimated cost of enforcement of this act.

(13) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required under this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required under this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

History: Add. 1997, Act 91, Imd Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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Popular Name: Secondary Mortgage Loan Act

493.56b Powers of commissioner.

Sec. 6b.

(1) The commissioner shall exercise general supervision and control over brokers, lenders, and servicers doing business in this state.

- (2) In addition to the other powers granted by this act, the commissioner may do any of the following:
- (a) Deny an application for a license or registration.
 - (b) Conduct examinations and investigations of any person, as necessary to enforce this act and the rules promulgated under this act.
 - (c) Investigate complaints filed against licensees or registrants.
 - (d) Advise the attorney general or the prosecuting attorney of a county in which a broker, lender, or servicer is conducting business that the commissioner believes a licensee, registrant, or other person is violating this act. The attorney general or prosecuting attorney shall bring a legal action to enjoin the operation of the business of the broker, lender, or servicer or prosecute violations of this act.
 - (e) Bring an action in the Ingham county circuit court to enjoin a person from participating in, continuing to practice, or from engaging in a practice that is an unsafe or injurious practice or that violates this act or a rule promulgated under this act.
 - (f) Order a person to cease and desist from a violation of this act or a rule promulgated under this act under section 14.
 - (g) Suspend, revoke, or refuse to issue a license or registration under section 11.
 - (h) Assess a civil fine under section 27.
 - (i) Appoint a conservator under section 12a.
 - (j) Issue an order to prohibit a person from being employed by, an agent of, or control person of, a licensee or registrant under section 14a.
 - (k) Censure a licensee or registrant.
- (3) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:
- (a) Issue a subpoena under section 15.
 - (b) Administer oaths under section 15.
 - (c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.
 - (d) Have free access during regular business hours to the offices, places of business, or other location where the licensee, registrant, or an affiliate of a licensee or registrant, maintains business-related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be available for public inspection or copying or divulged to any person except as follows:
 - (i) To the attorney general.
 - (ii) To a regulatory agency.
 - (iii) In connection with an enforcement action brought under this or another applicable act.
 - (iv) To law enforcement officials.
 - (v) To persons authorized by the Ingham county circuit court to receive the information.
 - (e) Employ independent investigators to conduct a part or all of an investigation, in the case of an investigation other than an examination.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2002, Act 392, Imd. Eff. May 30, 2002 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.57 Repealed. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's Notes: The repealed section pertained to duties of commissioner upon refusal to issue license.

Popular Name: Secondary Mortgage Loan Act

493.58 Summary suspension of license or registration; order; affidavit; service; filing request for hearing; duration of license suspension; record.

Sec. 8.

(1) The commissioner may issue an order summarily suspending a license or registration under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, supported by an affidavit that an imminent threat of financial loss or imminent threat to the public welfare exists. The order to summarily suspend a license or registration shall be served upon the licensee or registrant.

(2) A licensee or registrant upon which an order to summarily suspend its license or registration has been served shall have 20 days after the date of service of the order within which to file with the commissioner a request for a hearing.

(3) A hearing shall be promptly held upon receipt of a request for a hearing filed by a licensee or registrant.

(4) A summary suspension of a license or registration shall continue until the commissioner finds that the imminent threat of financial loss and imminent threat to the public welfare no longer exist.

(5) The record created at the hearing of the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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Popular Name: Secondary Mortgage Loan Act

493.59 Order in addition to other legal actions.

Sec. 9.

A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license or registration shall be in addition to an informal conference, criminal prosecution, or proceeding to deny, revoke, or suspend a license or registration, or any other legal action.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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Popular Name: Secondary Mortgage Loan Act

493.60 Complaint; forwarding to licensee or registrant; response; investigation or administrative action.

Sec. 10.

(1) Any person may file a complaint with the commissioner alleging that a licensee or registrant has violated this act or a rule promulgated or an order issued under this act.

(2) The commissioner may forward the complaint to the licensee or registrant against which the complaint is filed.

(3) The commissioner shall request that the licensee or registrant respond to the complainant and provide the

commissioner with a copy of the response within a specified period. If the licensee or registrant fails to respond to the complainant within the specified period, or fails to handle the complaint to the satisfaction of the commissioner, the commissioner may commence an investigation or administrative action against the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.61 Suspension, revocation, or refusal to issue or renew license or registration; notice; hearing; findings; facts or conditions; surrender of license or registration; preexisting contract not affected; lost or destroyed license or registration certificate.

Sec. 11.

(1) The commissioner shall give notice to a licensee, registrant, or applicant of the commissioner's intention to enter an order to suspend or revoke a license or registration or to refuse to issue a license or registration. The notice shall be in writing and served personally or sent by certified mail to the licensee, registrant, or applicant.

(2) A licensee, registrant, or applicant may request a hearing to contest the intention to enter an order or refusal under subsection (1) within 20 days after service of the notice. If a hearing regarding suspension, revocation, or refusal to issue a license or registration is not requested, the commissioner shall enter a final order regarding the suspension, revocation, or refusal to issue a license or registration. The hearing shall be conducted under the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The commissioner may suspend, revoke, or refuse to issue or renew a license or registration if he or she finds that the licensee or registrant or an owner, director, officer, member, partner, stockholder, employee, or agent of a licensee or registrant has done any of the following:

(a) Made a material misstatement in an application.

(b) Engaged in fraud, deceit, or material misrepresentation in connection with any transaction subject to this act.

(c) Failed after 10 days' written notice of default, to pay an annual operating fee, to maintain in effect a bond as required by the commissioner, or to comply with a demand, ruling, or requirement of the commissioner lawfully made under this act.

(d) Either knowingly or without the exercise of due care to prevent it, violated this act or a rule promulgated under this act.

(3) The commissioner may suspend, revoke, or refuse to renew a license or registration upon a finding of a fact or condition that, if the fact or condition had existed at the time of the original application for the license or registration, clearly would have warranted the commissioner to refuse to issue the license or registration originally.

(4) A licensee or registrant may surrender a license or registration by delivering to the commissioner the license or registration with written notice that the licensee or registrant surrenders the license or registration. The surrender, suspension, or revocation of a license or registration under this act shall not affect the licensee's or registrant's civil or criminal liability for acts committed in violation of this act. The surrender of a license or registration does not affect a proceeding to suspend or revoke a license or registration.

(5) Except as otherwise provided by law, a surrender, suspension, or revocation of a license or registration does not impair or affect the obligation of a preexisting contract between the licensee or registrant and another person.

(6) A licensee or registrant whose license or registration certificate has been destroyed or lost may comply with this section by submitting to the commissioner a notarized affidavit of the loss accompanied by written notice that the licensee or registrant surrenders the license or registration.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.62 Contracts or commitments made prior to suspension or revocation.

Sec. 12.

(1) This act does not prevent a person whose license or registration has been suspended or revoked from continuing to service secondary mortgage loans under servicing contracts in existence at the time of the suspension for a period not to exceed 6 months after the date of the entry of the final decision in the contested case suspending or revoking the license or registration.

(2) In the event of a summary suspension or revocation, the commissioner shall have discretion to order the licensee or registrant to cease all activities including the servicing of secondary mortgage loans and the closing of secondary mortgage loans under any commitments to make secondary mortgage loans issued by a person prior to the suspension or revocation.

(3) For an administrative action other than a summary suspension or revocation, this act does not prevent a person whose license or registration has been suspended or revoked from making a secondary mortgage loan under a commitment to make a secondary mortgage loan issued by the person prior to the suspension or revocation. A person who received a commitment issued by a person whose license or registration has been suspended or revoked may, prior to closing the loan, terminate the commitment and receive a refund of all money paid to the person.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.62a Conservator; appointment; reimbursement of expenses; powers; termination; disposition of compensation and expenses; disbursement of funds and interest.

Sec. 12a.

(1) Notwithstanding section 12, if the commissioner determines that a licensee or registrant is, intentionally or as a result of gross or wanton negligence, not servicing secondary mortgage loans as required by this act or the terms of the servicing contracts, the commissioner may appoint a conservator for the licensee or registrant and require the conservator to provide a bond or security as the commissioner considers necessary. The commissioner may appoint as conservator 1 of the employees of the financial institutions bureau or some other competent and disinterested person. The financial institutions bureau shall be reimbursed out of the assets of the conservatorship for actual expenses incurred in connection with the conservatorship. The amount reimbursed shall be paid into the revolving fund provided for in subsection (4). The expenses shall be a first charge upon the assets of the licensee or registrant and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

(2) The conservator, under the direction of the commissioner, shall take sole control of all the affairs of the licensee or registrant and the possession of the books and records of the licensee or registrant. The licensee or registrant may transfer or assign the rights to service secondary mortgage loans to a person approved by the commissioner. The conservator of the licensee or registrant shall take such action as may be necessary to assure that the secondary mortgage loans are serviced as required by this act and the servicing contracts.

(3) If the commissioner is satisfied that termination of the conservatorship may be done safely and is in the public interest, the commissioner may terminate the conservatorship and permit the licensee or registrant to resume the servicing of secondary mortgage loans subject to any terms, conditions, and limitations as prescribed by the commissioner.

(4) All compensation and expenses required to be reimbursed to the financial institutions bureau in connection with a conservatorship and all expenses for state supervision of conservatorship under this act shall be deposited in the state treasury and shall be directed to a financial institutions bureau revolving fund. Money in the fund and any interest earned shall only be disbursed on proper vouchers, approved by the commissioner, to reimburse the financial institutions bureau for expenses incurred by the bureau in connection with conservatorships of licensees or registrants.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.
Popular Name: Secondary Mortgage Loan Act

493.63 Duration of license or registration; reinstatement of suspended license or registration; issuing new license or registration; consent required for transfer or assignment; requirements for transfer.

Sec. 13.

(1) A license or registration remains in force until the date of expiration or until surrendered, revoked, or suspended under this act. The commissioner may reinstate a suspended license or registration or issue a new license or registration to a licensee or registrant whose license or registration has been revoked if the conditions under which the license or registration was revoked have been corrected and the commissioner is satisfied, as the result of an investigation, that the conditions are not likely to recur.

(2) A person shall not transfer or assign a license or registration without the consent of the commissioner. The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee or registrant that is a corporation, or more than 25% of the interest in a licensee or registrant that is a limited liability company or partnership or other unincorporated legal entity is considered a transfer of a license or registration for purposes of this subsection.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.64 Order to cease and desist; issuance; conditions; notice; hearing; failure to appear as consent; service or order; effective date and enforcement.

Sec. 14.

(1) If in the opinion of the commissioner a licensee or registrant is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare, or is, has, or is about to violate a law or rule, the commissioner may serve a notice as provided in subsection (2).

(2) A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee or registrant. The hearing shall be held not earlier than 30 days nor later than 60 days after service of the notice unless another date is set by the commissioner at the request of the licensee or registrant.

(3) If the licensee or registrant fails to appear at the hearing by a duly authorized representative, the licensee or registrant shall have consented to the issuance of the cease and desist order.

(4) In the event of consent under subsection (3), or if upon the record made at the hearing, the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee or registrant an order to cease and desist from the practice or violation. The order may require the licensee or registrant and its directors, officers, members, partners, trustees, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(5) If the commissioner issues a cease and desist order in conjunction with a summary suspension order, the cease and desist order shall become effective on the date of service.

(6) A cease and desist order issued upon consent shall become effective at the time specified in the order and remain effective and enforceable as provided in the order.

(7) Except as provided in subsections (5) and (6) and to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order shall become effective at the expiration of 30 days after the

service of the order upon the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1988, Act 444, Imd. Eff. Dec. 27, 1988 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.64a Fraud.

Sec. 14a.

(1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee or registrant of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for secondary mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee or registrant and from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee or registrant of which the person subject to the notice or order is an employee, agent, or control person.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002

Popular Name: Secondary Mortgage Loan Act

493.64b Hearing; final decision; judicial review; stay of commissioner's order.

Sec. 14b.

(1) A hearing under section 14 or 14a shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding, or a person affected by an order issued under section 14 or 14a may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002

Popular Name: Secondary Mortgage Loan Act

493.64c Enforcement of order; jurisdiction.

Sec. 14c.

The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 8, 14, or 14a.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002

Popular Name: Secondary Mortgage Loan Act

493.64d Violation as misdemeanor; penalty.

Sec. 14d.

Any current or former executive officer, director, agent, or control person who violates a final order issued under section 14a is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002

Popular Name: Secondary Mortgage Loan Act

493.64e Violation of order; exceptions.

Sec. 14e.

A control person who is subject to an order issued under section 14a and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee or registrant after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee or registrant to an unrelated third party.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002

Popular Name: Secondary Mortgage Loan Act

493.65 Subpoena of witnesses and evidence; oaths and affirmations; certain conduct as misdemeanor.

Sec. 15.

(1) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence, in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to a person whose testimony is required.

(2) A person subpoenaed under this section who willfully refuses or neglects to appear at the time and place named in the subpoena, or to produce books, accounts, records, files, or documents required by the commissioner, or who refuses to be sworn or, unless permitted by law, refuses to answer as a witness, is guilty of a misdemeanor.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.66 Failure to testify or comply with subpoena; court order; contempt.

Sec. 16.

If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence. The court may punish by contempt a person who fails to obey the court's order.

History: 1981, Act 125, Imd. Eff. July 23, 1981

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.67 Maintaining records relating to conduct of business; availability; statement of borrower's account; ledger history; obligation of servicer; fee prohibited.

Sec. 17.

(1) A licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the commissioner to enable the commissioner to determine whether the business of the licensee or registrant is conducted as required by this act and the rules promulgated under this act.

(2) The preservation of records by reproduction under the records media act, 1992 PA 116, MCL 24.401 to 24.403, constitutes compliance with this section.

(3) If the books, accounts, records, and documents are not made available in this state, the licensee or registrant shall pay the reasonable travel, lodging, and meal expenses of the examiner as provided in section 6a(6)(d).

(4) If a licensee or registrant that is a servicer, in connection with a secondary mortgage loan, requires a mortgage escrow account, the licensee or registrant shall deliver to the borrower annually a statement of the borrower's account showing the unpaid principal balance of the secondary mortgage loan at the end of the immediately preceding 12-month period, the interest paid during the period, and the amount deposited into escrow and disbursed from escrow during the period.

(5) Within 25 days after receipt of a written request from the borrower, a servicer shall deliver to the borrower a ledger history of the borrower's account showing the date and amount of all payments made or credited to the

account for the immediately preceding 12-month period, and the total unpaid balance.

(6) A servicer is not obligated to furnish to the borrower more than 1 annual statement and 1 ledger history upon written request of the borrower in a 12-month period.

(7) A fee shall not be charged the borrower under subsection (4) for the annual statement or for 1 ledger history furnished to the borrower in a 12-month period.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.68 Documents; preservation; other books, accounts, records, and documents.

Sec. 18.

(1) A licensee or registrant shall preserve and keep available for examination by the commissioner each secondary mortgage loan document in its possession or control, including the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the secondary mortgage loan is transferred or assigned, or the expiration of 2 years after the date the secondary mortgage loan is closed, whichever occurs first.

(2) If the secondary mortgage loan is transferred or assigned, the licensee or registrant shall preserve and keep available for examination by the commissioner copies of the promissory note, mortgage, truth-in-lending disclosure statement, and settlement statement in its possession or control for 2 years after the date the secondary mortgage loan is transferred or assigned.

(3) Notwithstanding any other provision of this act, each licensee or registrant shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a secondary mortgage loan for the period of time required by state or federal law.

(4) A licensee or registrant shall preserve all other books, accounts, records, and documents pertaining to the licensee's or registrant's business and keep them available for examination by the commissioner for not less than 2 years after the conclusion of the fiscal year of the licensee or registrant in which the book, account, record, or document was created.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.69 Repealed. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's Notes: The repealed section pertained to rules prescribing minimum information required to be shown in books, accounts, and records.

Popular Name: Secondary Mortgage Loan Act

493.70 Making or offering to make secondary mortgage loan; terms and conditions.

Sec. 20.

A licensee or registrant shall not make or offer to make a secondary mortgage loan except on the terms and conditions authorized by this act and the rules promulgated under this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.71 Interest rate; limitation; computation; prepaid finance charge or fee.

Sec. 21.

(1) A licensee or registrant may charge, contract for, receive, or collect on a secondary mortgage loan an interest rate not exceeding the interest rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. Interest on a secondary mortgage loan under this act shall not be added or deducted in advance but shall be computed on the basis of the actual unpaid balance of the principal of the loan on a daily or monthly basis for the time actually outstanding until the loan is paid in full.

(2) This section does not prohibit a lender from offering the borrower, in connection with a secondary mortgage loan that involves other than open-end credit, an option to pay a prepaid finance charge in exchange for a lower contract interest rate or to charge a prepayment fee in the amount permitted under section 1c of 1966 PA 326, MCL 438.31c.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1982, Act 361, Imd. Eff. Dec. 23, 1982 ;-- Am. 1983, Act 43, Imd. Eff. May 12, 1983 ;-- Am. 1983, Act 251, Imd. Eff. Dec. 29, 1983 ;-- Am. 1984, Act 416, Imd. Eff. Dec. 28, 1984 ;-- Am. 1985, Act 155, Imd. Eff. Nov. 15, 1985 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.72 Charges and fees includable in principal; interest authorized by law; sale of insurance; hazard insurance; charges permitted by federal lending program.

Sec. 22.

(1) A licensee or registrant shall not directly or indirectly assess any charges or fees in connection with making a secondary mortgage loan, except for any of the following, which may be included in the principal of the loan:

(a) Charges for credit life insurance or credit accident and health insurance as defined in section 3 of the credit insurance act, 1958 PA 173, MCL 550.603, or any other insurance under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, that is offered by the licensee or registrant and that the borrower has the option to purchase.

(b) If reasonable and necessary, the actual expenses incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a secondary mortgage loan by any of the following, as applicable:

(i) The licensee.

(ii) The registrant.

(c) A nonrefundable processing fee that is not more than 5% of the gross amount of the loan.

(d) Other charges authorized under the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(e) A reasonable annual fee for the privilege of receiving open-end credit from the licensee or registrant.

(2) The charges authorized under this section are in addition to interest authorized by law and are not a part of the interest collected or agreed to be paid on the secondary mortgage loan within the meaning of the law of this state that limits the rate of interest that may be exacted in a transaction. The charges shall be paid only once by the borrower to the licensee or registrant.

(3) Any insurance sold by a licensee or registrant in connection with a secondary mortgage loan must comply with the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or the credit insurance act, 1958 PA 173 MCL 500.601 to 500.624, as applicable.

(4) If a licensee or registrant requires a borrower to purchase hazard insurance, the licensee or registrant shall

not require the borrower to purchase the insurance through a particular agency or agent or from a particular insurer.

(5) This section does not prohibit a licensee or registrant from imposing the charges that are permitted by any federal lending program designed to promote the making of secondary mortgage loans.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1994, Act 141, Imd. Eff. May 27, 1994 ;-- Am. 1994, Act 408, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2009, Act 77, Eff. July 31, 2010

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Popular Name: Secondary Mortgage Loan Act

493.73 Instrument evidencing or securing secondary mortgage; contents.

Sec. 23.

An instrument evidencing or securing a secondary mortgage loan shall not contain any of the following:

- (a) A power of attorney to confess judgment.
- (b) A provision by which the debtor waives rights accruing under this act, any federal law, or law of this state.
- (c) An assignment of or order for the payment of all or part of salary, wages, commissions, or other compensation for services earned or to be earned.
- (d) A provision to compel, encourage, or induce a borrower to incorporate to evade the provisions of this act.
- (e) A provision by which a debtor agrees to pay damages absent a judgment by a court.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

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Popular Name: Secondary Mortgage Loan Act

Admin Rule: R 493.101 et seq. of the Michigan Administrative Code.

493.74 Licensee or registrant; prohibited conduct.

Sec. 24.

(1) A licensee or registrant shall not transfer or assign a secondary mortgage loan or a security directly representing an interest in 1 or more secondary mortgage loans before the disbursement of 75% or more of the proceeds of the secondary mortgage loan to, or for the benefit of, the borrower. This subsection shall not apply to any of the following:

- (a) A land contract not considered to be an equitable secondary mortgage.
 - (b) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the proceeds for a limited period of time.
 - (c) A construction loan.
 - (d) A secondary mortgage loan that provides in writing that the loan proceeds shall be disbursed to or for the benefit of the borrower in installments or upon the request of the borrower or upon the completion of renovations or repairs to the dwelling situated on the real property subject to the secondary mortgage loan.
- (2) It is a violation of this act for a licensee or registrant to do any of the following:
- (a) Suppress or withhold from the commissioner any information that the licensee or registrant possesses that would make the licensee or registrant ineligible for licensing or registration under this act or would warrant the commissioner's denial of a license or registration application.
 - (b) Violate any provisions of 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.
 - (c) Until proper disbursement is made, fail to place in a trust or escrow account held by a depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other

negotiable instruments received by a broker, lender, or servicer that is the portion of a payment on a secondary mortgage loan that the person is obligated to pay to a third party. The deposits shall include amounts paid to the holder of the secondary mortgage loan, amounts for property taxes and insurance premiums, and amounts paid under an agreement that requires, if the secondary mortgage loan is not closed, the amounts paid shall be refunded to the prospective borrower, or if the secondary mortgage loan is closed, the amounts paid shall be applied to fees and costs incurred at the time the secondary mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the secondary mortgage loan application, to obtain an appraisal, or to receive a credit report.

(d) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or refuse or fail, within a reasonable time, to furnish any information or make a report that may be required by the commissioner under this act.

(e) Be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(f) Refuse or fail to pay within a reasonable time expenses assessed under this act.

(g) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(h) Fail to make a secondary mortgage loan pursuant to, and in accordance with, a written commitment to make a secondary mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment prior to the expiration of the commitment.

(i) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a secondary mortgage loan application.

(j) Take a security interest in real property before closing the secondary mortgage loan to secure payment of fees assessed in connection with a secondary mortgage loan application.

(k) Except as otherwise provided under section 14e, knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2002, Act 392, Imd. Eff. May 30, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.75 Violation of consumer credit protection act as violation of act.

Sec. 25.

A violation of the consumer credit protection act, Public Law 90-321, 82 Stat. 146, as amended by title VI of Public Law 96-221, 94 Stat. 168 or other applicable federal law is a violation of this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.76 Advertising; prohibited conduct.

Sec. 26.

(1) A licensee or registrant shall not, willfully or knowingly, make a false, misleading, or deceptive advertisement regarding secondary mortgage loans or the availability of secondary mortgage loans.

(2) A licensee or registrant shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the intent of making loans at those or lower rates, and under the stated

conditions, to secondary mortgage loan applicants who meet the standards or qualifications prescribed by the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997
Popular Name: Secondary Mortgage Loan Act

493.76a Repealed. 2009. Act 77, Eff. July 31, 2010.

Compiler's Notes: The repealed section pertained to registration or license requirements.

493.77 Violation of act; making secondary mortgage loans without license as misdemeanor; penalty; civil fine; actions.

Sec. 27.

(1) In addition to the penalties provided by this act, a violation of this act with respect to a particular secondary mortgage loan transaction is also subject to the penalty and remedy provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(2) A person, association, nonprofit corporation, common law trust, joint stock company, limited liability company, or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or representative thereof who or which willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$15,000.00, imprisonment for not more than 1 year, or both:

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

(b) Acts as a secondary mortgage loan officer in this state and is not a licensed secondary mortgage loan officer under the mortgage loan originator licensing act.

(c) Coerces or induces a real estate appraiser to inflate the value of real property used as collateral for a secondary mortgage loan, including, but not limited to, by doing any of the following:

(i) Representing or implying that a real estate appraiser will not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

(ii) Representing or implying that a real estate appraiser will not be paid for an appraisal unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

(3) A person who violates this act or directly or indirectly counsels, aids, or abets in a violation is liable, in addition to other penalties and forfeitures imposed by this act, for a civil fine of not more than \$3,000.00 for each violation, except that a person shall not be fined more than \$30,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation. The civil fine shall be sued for and recovered by the commissioner and shall be collected and enforced by summary proceedings by the attorney general.

(4) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to do any of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Enjoin a person from engaging in, or who is about to engage in, a method, act, or practice that violates this act.

(c) Recover actual damages resulting from a violation of this act or \$250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1992, Act 77, Imd. Eff. June 2, 1992 ;-- Am. 1995, Act 164, Eff. Mar. 28, 1996 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997 ;-- Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008 ;-- Am. 2008, Act 530, Imd. Eff. Jan. 13, 2009 ;-- Am. 2009, Act 77, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.78 Rules.

Sec. 28.

The commissioner shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to administer and enforce this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

Admin Rule: R 493.101 et seq. of the Michigan Administrative Code.

493.79 Construction of act; applicability.

Sec. 29.

This act does not apply to a depository financial institution that is subject to other laws of this state, another state, or of the United States regulating the power of the depository financial institution to engage in secondary mortgage loan transactions or upon the conditions and limitations imposed by law upon the exercise of this power. This act does not apply to an affiliate or subsidiary of a depository financial institution or a depository financial institution holding company if the depository institution maintains an office or branch office in this state.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.79a Applicability of act to nonprofit corporation.

Sec. 29a.

(1) This act does not apply to a nonprofit corporation that makes, brokers, or services mortgage loans in connection with a neighborhood housing program assisted under the neighborhood reinvestment corporation act, title VI of Public Law 95-557, 42 U.S.C. 8101 to 8107.

(2) This act does not apply to a nonprofit corporation that makes or services secondary mortgage loans only in connection with mortgages made under a program described in section 25a(1)(b) and (c) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1675a, if the commissioner has determined that the nonprofit corporation is exempt from that act under section 25a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1675a.

History: Add. 1994, Act 261, Imd. Eff. July 5, 1994 ;-- Am. 1998, Act 372, Imd. Eff. Oct. 20, 1998

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.80 Persons permitted to make secondary mortgage loans.

Sec. 30.

(1) Except as otherwise provided by this act, a secondary mortgage loan may be made in compliance with this act, and only in conformance with the interest rate limitations of 1966 PA 326, MCL 438.31 to 438.33, by either of the following:

(a) A salesperson acting as an agent for a residential builder, or a residential builder, licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, when made or negotiated in connection with the sale of a residential structure constructed by that builder.

(b) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, and engaged in the sale of real estate as a principal vocation, when made or negotiated in connection with a real estate sale where the real estate broker or salesperson affiliated with the broker represents either the buyer or seller.

(2) Except as otherwise provided by this act, a secondary mortgage loan may be made in compliance with this act by a person to an employee of that person provided that the proceeds of the loan are used to assist the employee in meeting his or her housing needs.

History: 1981, Act 125, Imd. Eff. July 23, 1981 ;-- Am. 1984, Act 124, Imd. Eff. June 1, 1984 ;-- Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

493.81 Powers and duties of attorney general.

Sec. 31.

The powers and duties of the attorney general provided in this act are in addition to his existing powers and duties provided by statutes and common law, and nothing in this act shall impair or restrict the jurisdiction of any court in any action or proceeding by the attorney general under any other statute or common law.

History: 1981, Act 125, Imd. Eff. July 23, 1981

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular Name: Secondary Mortgage Loan Act

MORTGAGE LOAN ORIGINATOR LICENSING ACT

Act 75 of 2009

AN ACT to provide for the licensing of mortgage loan originators; to regulate the business practices of mortgage loan originators; to establish certain obligations of employees and principals of mortgage loan originators; to prescribe the powers and duties of certain state agencies and officials; and to provide remedies and prescribe penalties.

History: 2009, Act 75, Eff. July 31, 2009

The People of the State of Michigan enact:

493.131 Short title.

Sec. 1.

This act shall be known and may be cited as the "mortgage loan originator licensing act".

History: 2009, Act 75, Eff. July 31, 2009

493.133 Definitions.

Sec. 3.

As used in this act:

- (a) "Commissioner" means the director.
- (b) "Department" means the department of insurance and financial services.
- (c) "Depository institution" means that term as defined in section 3 of the federal deposit insurance act, 12 USC 1813, or a credit union.
- (d) "Director" means the director of the department or his or her designee.
- (e) "Dwelling" means that term as defined in section 103 of the truth in lending act, 15 USC 1602.
- (f) "Employee" means an individual who meets both of the following:
 - (i) Has an employment relationship acknowledged by that individual and the person that engages that individual to originate mortgage loans.
 - (ii) Is treated as an employee by the person that engages that individual to originate mortgage loans for compliance with federal income tax laws.
- (g) "Exempt company" means a person that meets all of the following:
 - (i) Is not required to obtain a license or registration, or is exempt from licensing or registration, under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.
 - (ii) Has a unique identifier in the nationwide mortgage licensing system and registry.
 - (iii) Has been approved by the director in the nationwide mortgage licensing system and registry as an exempt company.
- (h) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- (i) "Financial licensing acts" means that term as defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.
- (j) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
- (k) "Individual" means a natural person.
- (l) "Licensed mortgage loan originator" means a mortgage loan originator who holds a valid license issued by the director under this act.
- (m) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or designated as exempt from licensing under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072. For purposes of this subdivision, "clerical or support duties" may include any of the following after an application is received:
 - (i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan.
 - (ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
- (n) "Mortgage loan originator" means an individual who originates residential mortgage loans and meets all of the following:
 - (i) Is not an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 5(3).
 - (ii) Is not a person that only performs real estate brokerage activities and is licensed or registered under the laws

of this state, unless the person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator.

(iii) Is not a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 USC 101(53D).

(o) "Mortgage servicer" means a person that directly or indirectly services or offers to service residential mortgage loans.

(p) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

(q) "Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

(r) "Office of financial and insurance regulation" means the department.

(s) "Originate" means to do any of the following for compensation or gain, or in the expectation of compensation or gain, in connection with a residential mortgage loan:

(i) Take a residential mortgage loan application.

(ii) Offer or negotiate terms of a residential mortgage loan.

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

(u) "Real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including, but not limited to, any of the following:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(iii) On behalf of any party, negotiating any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to that contract.

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(v) Offering to engage in any activity, or act in any capacity, described in subparagraph (i), (ii), (iii), or (iv).

(v) "Registered mortgage loan originator" means an individual who meets all of the following:

(i) Is a mortgage loan originator and is an employee of any of the following:

(A) A depository institution.

(B) A subsidiary of a depository institution that is owned and controlled by that depository institution and is regulated by a federal banking agency.

(C) An institution regulated by the farm credit administration.

(ii) Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(w) "Residential mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate on which a person has constructed or intends to construct a dwelling.

(x) "Residential real estate" means any real property located in this state on which a person has constructed or intends to construct a dwelling.

(y) "SAFE act" means the secure and fair enforcement for mortgage licensing act of 2008, 12 USC 5101 to 5117.

(z) "Service" means the collection or remittance for a lender, noteowner, or noteholder or a person's own account of 4 or more installment payments of the principal of, interest of, or an amount placed in escrow under a residential mortgage loan, mortgage servicing agreement, or an agreement with a mortgage servicer.

(aa) "Sponsor" means a person that meets all of the following:

(i) Has a unique identifier in the nationwide mortgage licensing system and registry.

(ii) Is approved by the director in the nationwide mortgage licensing system and registry as an exempt company or as a person licensed or registered under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(iii) Has indicated in the nationwide mortgage licensing system and registry that an individual will act as a mortgage loan originator for that person under that person's specific license, registration, or status as an exempt company.

(bb) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

History: 2009, Act 75, Eff. July 31, 2009 ;-- Am. 2010, Act 356, Imd. Eff. Dec. 22, 2010 ;-- Am. 2012, Act 150, Imd. Eff. May 30, 2012 ;-- Am. 2019, Act 141, Imd. Eff. Dec. 5, 2019

Compiler's Notes: For references to office of financial and insurance regulation to be deemed as department of insurance and financial

services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991. For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

493.135 Engaging in business of mortgage loan originator; license required; exemptions; independent contractor loan processor or underwriter; establishment of licensing rules and interim procedures.

Sec. 5.

(1) Unless specifically exempted under subsection (2), beginning July 31, 2010, and except as provided in sections 5a and 5b, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this act. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

(2) Each of the following is exempt from this act:

(a) A registered mortgage loan originator, when acting for an entity described in section 3(v)(i)(A), (B), or (C).

(b) An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual.

(c) An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as his or her residence.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator.

(e) An individual who acts as a mortgage servicer, or who is an employee of a mortgage servicer, who offers or negotiates the terms of residential mortgage loans for the purpose of renegotiating, modifying, replacing, or subordinating the principal of existing residential mortgage loans of which the borrowers are behind in making their payments, are in default, or have a reasonable likelihood of falling behind in making payments or defaulting. The exemption provided under this subdivision does not apply to an individual who acts as a mortgage servicer, or is an employee of a mortgage servicer, who offers or negotiates the terms of a residential mortgage loan transaction that constitutes a refinancing under 12 CFR 1026.20(a) or that obligates a different consumer to pay the existing residential mortgage loan.

(3) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless that independent contractor loan processor or underwriter obtains and maintains a license under subsection (1). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

(4) The director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

History: 2009, Act 75, Eff. July 31, 2009 ;-- Am. 2012, Act 150, Imd. Eff. May 30, 2012 ;-- Am. 2014, Act 421, Imd. Eff. Dec. 30, 2014 ;-- Am. 2019, Act 141, Imd. Eff. Dec. 5, 2019

493.135a Registered mortgage loan originator; temporary authority; requirements; time period; "state" defined.

Sec. 5a.

(1) An individual who is a registered mortgage loan originator, upon becoming employed by an entity that is not an entity described in section 3(v)(i)(A), (B), or (C), shall have temporary authority to act as a mortgage loan originator for the period described in subsection (2) without first obtaining a license under this act if all of the

following apply:

(a) The individual is employed by an entity that is licensed or registered under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(b) The individual has not had an application for a mortgage loan originator license denied or a mortgage loan originator license revoked or suspended in this state or any other state.

(c) The individual has not been subject to, or served with, a cease and desist order in this state or any other state, or under 12 USC 5113.

(d) The individual has not been convicted of, or pled guilty or no contest to, a misdemeanor or felony that would preclude licensure under this act.

(e) The individual has submitted an application for a license under section 7 and the fee required under section 19, and has met the applicable surety bond requirement described in section 29.

(f) The individual was registered in the nationwide mortgage licensing system and registry as a mortgage loan originator during the 1-year period immediately preceding the date on which the information required under section 7 is submitted.

(g) The individual is not subject to a prohibition order issued under section 27 or any of the financial licensing acts.

(2) The period of temporary authority as provided in subsection (1) begins on the date on which the individual submits the information required under section 7 and the fee required under section 19, and has met the applicable surety bond requirement described in section 29, and ends on the earliest of the following dates:

(a) The date on which the individual withdraws the application submitted under section 7.

(b) The date on which the director denies, or issues a notice of intent to deny, the application.

(c) The date on which the director approves the application.

(d) The date that is 120 days after the date on which the individual submits the application under section 7, if the application is listed on the nationwide mortgage licensing system and registry as incomplete.

(3) As used in this section, "state" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

History: Add. 2019, Act 141, Imd. Eff. Dec. 5, 2019

493.135b Out of state license; temporary authority; requirements; time period; "state" defined.

Sec. 5b.

(1) An individual who is a mortgage loan originator licensed in another state shall have temporary authority to act as a mortgage loan originator in this state for the period described in subsection (2) without first obtaining a license under this act if all of the following apply:

(a) The individual meets the requirements listed in section 5a(1)(a) to (g), as determined by the department.

(b) The individual was licensed in another state during the 30-day period immediately preceding the date on which the information required under section 7 is submitted.

(2) The period of temporary authority as provided in subsection (1) begins on the date on which the individual submits the information required under section 7 and the fee required under section 19, and has met the applicable surety bond requirement described in section 29, and ends on the earliest of the following dates:

(a) The date on which the individual withdraws the application submitted under section 7.

(b) The date on which the director denies, or issues a notice of intent to deny, the application.

(c) The date on which the director approves the application.

(d) The date that is 120 days after the date on which the individual submits the application, if the application is listed on the nationwide mortgage licensing system and registry as incomplete.

(3) As used in this section, "state" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

493.135c Temporary authority; subject to laws of this state.

Sec. 5c.

With respect to the temporary authority authorized under sections 5a and 5b, both of the following apply:

(a) A person employing an individual who has the temporary authority described under section 5a or 5b to act as a mortgage loan originator in this state is subject to the applicable law of this state to the same extent as if that individual is a licensed mortgage loan originator.

(b) An individual who has the temporary authority described under section 5a or 5b to act as a mortgage loan originator in this state and who engages in residential mortgage loan origination activities is subject to the applicable law of this state to the extent as if that individual is a licensed mortgage loan originator.

493.137 Application; form; fee; criminal history check; relationships or contracts with nationwide mortgage licensing system and registry; furnishing certain information; use.

Sec. 7.

(1) An applicant for a license under this act shall apply in a form as prescribed by the commissioner. The applicant shall include with the application the fee required under section 19 and the criminal history check required under subsection (2). Each application form shall contain the content established by rule, instruction, or procedure of the commissioner. The commissioner may change or update the application form and its contents as necessary by the commissioner in order to carry out the purposes of this act.

(2) A person that employs or offers to employ, or engages or offers to engage as an agent, an individual as a mortgage loan originator, to originate mortgage loans on or after July 31, 2010, shall conduct a criminal history check of that individual and the applicant shall submit the results of that criminal history check with his or her application for license. All of the following apply to the criminal history check of an individual required under this subsection:

(a) The federal bureau of investigation shall perform the criminal history check.

(b) The individual who is the subject of the criminal history check shall have his or her fingerprints taken by a law enforcement agency or by another person that the commissioner determines is qualified to take fingerprints; shall pay the agency or person the fees as required by the federal bureau of investigation for processing fingerprints and completing a criminal history check; and shall request that the agency or person forward the fingerprints and appropriate fee to the federal bureau of investigation for a national criminal history check.

(c) After receiving a proper request and the required fees under this subsection, the federal bureau of investigation shall conduct the criminal history check and provide the commissioner and the applicant with the results of the criminal history check. The results shall contain any criminal history record information concerning the individual maintained by the federal bureau of investigation's criminal history check.

(d) A criminal history check required under this subsection may be conducted, requested of and performed by the federal bureau of investigation, and submitted to the commissioner at any time on or after July 31, 2009.

(3) The commissioner is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensed mortgage loan originators or other persons subject to this act.

(4) In connection with an application for licensing as a mortgage loan originator, an applicant shall at a minimum furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including, but not limited to, all of the following:

(a) The results of the criminal history check conducted under subsection (2).

(b) The applicant's personal history and experience in a form prescribed by the nationwide mortgage licensing

system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the commissioner to obtain all of the following concerning the applicant:

(i) An independent credit report obtained from a consumer reporting agency, as defined in section 603 of the fair credit reporting act, 15 USC 1681a.

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(5) For the purposes of this section, the commissioner may use the nationwide mortgage licensing system and registry for any of the following:

(a) Requesting information from and distributing information to the department of justice or any governmental agency.

(b) Requesting and distributing information to and from any source as directed by the commissioner.

History: 2009, Act 75, Eff. July 31, 2009

493.139 Issuance of mortgage loan originator license; findings; conviction.

Sec. 9.

(1) The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a) The applicant is not subject to a prohibition order issued by the commissioner under section 27 or under any of the financial licensing acts.

(b) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that the commissioner shall not consider a revocation that is formally vacated as a revocation for purposes of this subdivision.

(c) Subject to subsection (2), the applicant has not been convicted of, or pled guilty or no contest to, any of the following in a domestic, foreign, or military court:

(i) Within the 10-year period preceding the date of the license application, a felony other than a felony described in subparagraph (ii).

(ii) At any time preceding the date of the license application, any felony or misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement, forgery, a financial transaction, or securities.

(d) The applicant has demonstrated financial responsibility, character, and general fitness that commands the confidence of the community and warrants a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this act.

(e) The applicant has completed the preclicensing education requirement described in section 11.

(f) The applicant has passed a written test that meets the test requirement described in section 13.

(g) The applicant has met the surety bond requirement described in section 29.

(h) The applicant has a sponsor in the nationwide mortgage licensing system and registry that is approved by the commissioner.

(2) The commissioner shall not consider a conviction for which a pardon was granted a conviction for purposes of subsection (1)(c).

History: 2009, Act 75, Eff. July 31, 2009 ;-- Am. 2012, Act 150, Imd. Eff. May 30, 2012

493.141 Preclicensing education requirements.

Sec. 11.

(1) To meet the preclicensing education requirement under section 9(1)(e), except as provided in subsection (6), the applicant shall complete at least 20 hours of education approved under subsection (2), including at least all of the following:

(a) Three hours of federal law and regulations.

(b) Three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues.

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Only preclicensing education courses reviewed and approved by the nationwide mortgage licensing system and registry may be used to satisfy the requirements of subsection (1). Review and approval of a preclicensing education course shall include review and approval of the course provider.

(3) If approved by the nationwide mortgage licensing system and registry, a preclicensing education course may be provided by the employer of the applicant, an entity that is affiliated with the applicant by an agency contract, or a subsidiary or affiliate of that employer or entity.

(4) Preclicensing education may be offered in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

(5) If a person completes any preclicensing education requirements described in subsection (1)(a), (b), or (c) that are approved by the nationwide mortgage licensing system and registry for any state, the commissioner shall accept those hours of education as credit toward completion of the preclicensing education requirements under this section.

(6) For an application for a mortgage loan originator license submitted before July 31, 2010, completion of the classroom instruction requirement described in section 2a(4)(d) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1652a, or section 2a(4)(d) of the secondary mortgage loan act, 1981 PA 125, MCL 493.52a, satisfies the preclicensing education requirement described in subsection (1). An applicant described in this subsection shall provide proof in the form of a certificate of completion or other evidence acceptable to the commissioner.

(7) If an unlicensed individual who formerly held a license issued under this act applies for a new license under this act, he or she must prove that he or she completed all of the continuing education requirements of section 17 for the year in which the previous license was last held to be eligible for a new or renewed license.

History: 2009, Act 75, Eff. July 31, 2009

493.143 Qualified written test.

Sec. 13.

(1) To meet the written test requirement under section 9(1)(f), except as provided in subsection (5), an individual shall pass a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based on reasonable standards.

(2) A written test is not considered a qualified written test for purposes of subsection (1) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including all of the following:

(a) Ethics.

(b) Federal law and regulation pertaining to mortgage origination and to mortgage lending, including, but not limited to, fraud, consumer protection, and fair lending issues and the nontraditional mortgage marketplace.

(c) State law and regulation pertaining to mortgage origination and to mortgage lending, including, but not limited to, fraud, consumer protection, and fair lending issues and the nontraditional mortgage marketplace.

(3) If the test provider is approved by the nationwide mortgage licensing system and registry, the test provider may provide a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4) All of the following apply to a test under this section:

(a) An individual is not considered to have passed a qualified written test unless the individual achieves a test score of 75% or more correct answers to questions.

(b) An individual may retake a test 3 consecutive times, if each consecutive retaking occurs at least 30 days after the preceding test.

(c) If an individual fails 3 consecutive tests, the individual must wait at least 6 months before taking the test again.

(d) If an unlicensed individual who formerly held a license issued under this act applies for a new license under this act, he or she must retake the test if it has been at least 5 years since he or she last held a valid license under this act.

(5) If an applicant for a mortgage loan originator license has met the testing requirement described in section 2a(4)(e) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1652a, or section 2a(4)(e) of the secondary mortgage loan act, 1981 PA 125, MCL 493.52a, in the 5-year period preceding the date of the application, and provides evidence acceptable to the commissioner that he or she met that testing

requirement, the applicant is considered to have met that part of the written test requirement under section 9(1)(f) applicable to the state law and regulation described in subsection (2)(c).

History: 2009, Act 75, Eff. July 31, 2009

493.145 Annual renewal; expiration; reinstatement.

Sec. 15.

(1) The commissioner shall annually renew the license of a licensed mortgage loan originator if all of the following are met before his or her current license expires:

(a) The mortgage loan originator continues to meet the requirements for license issuance under section 9(1)(a) to (g).

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 17.

(c) The mortgage loan originator has paid the fee required under section 19.

(2) If a mortgage loan originator fails to satisfy the requirements of subsection (1) for renewal of his or her license, the license shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

History: 2009, Act 75, Eff. July 31, 2009 ;-- Am. 2012, Act 150, Imd. Eff. May 30, 2012

493.147 Continuing education requirements.

Sec. 17.

(1) To meet the annual continuing education requirements described in section 15(1)(b), a licensed mortgage loan originator shall complete at least 8 hours of education approved under subsection (2), including at least all of the following:

(a) Three hours of federal law and regulations.

(b) Two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues.

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Only continuing education courses reviewed and approved by the nationwide mortgage licensing system and registry, based on reasonable standards, may be used to satisfy the requirements of subsection (1). Review and approval of a continuing education course shall include review and approval of the course provider.

(3) If approved by the nationwide mortgage licensing system and registry, a continuing education course may be provided by the employer of the mortgage loan originator, an entity that is affiliated with the mortgage loan originator by an agency contract, or a subsidiary or affiliate of that employer or entity.

(4) Continuing education may be offered in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

(5) Both of the following apply to the continuing education requirements of a licensed mortgage loan originator:

(a) Except for section 15(2) and subsection (9), he or she may only receive credit for a continuing education course in the year in which the course is taken.

(b) He or she may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(6) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(7) If a person successfully completes any continuing education requirements described in subsection (1)(a), (b), or (c) that are approved by the nationwide mortgage licensing system and registry for any state, the commissioner shall accept those hours of education as credit toward completion of the continuing education requirements under this section.

(8) If an unlicensed individual who formerly held a license issued under this act applies for a new license under

this act, he or she must complete the continuing education requirements for the last year in which the license was held to be eligible for a new or renewed license.

(9) The commissioner by rule may establish a procedure by which an individual who meets the requirements of section 15(1)(a) and (c) may make up any deficiency in continuing education.

History: 2009, Act 75, Eff. July 31, 2009

493.149 Fees; reports; penalties; deposit of money in MBLSLA fund; limitation on fee levels.

Sec. 19.

(1) At the time of making an initial application for a mortgage loan originator license under this act, the applicant shall pay to the commissioner the annual operating fee established by the commissioner under subsection (2).

(2) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the reasonably anticipated costs of the office of financial and insurance regulation for administering and enforcing this act. The fee schedule shall include all of the following:

(a) An annual fee for each licensed mortgage loan originator in an amount established by the commissioner. For purposes of this subdivision, the commissioner shall establish an amount for the annual fee that is sufficient to defray the estimated cost of administering and enforcing the provisions of this act.

(b) For amending or reissuing a mortgage loan originator license, a fee of not less than \$15.00 or more than \$200.00.

(c) A licensed mortgage loan originator shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to conduct an examination or investigation of a licensed mortgage loan originator and the cost of independent investigators employed under section 33(6)(a).

(3) Fees received under this act are not refundable.

(4) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensed mortgage loan originator for the recovery of the fees and penalties together with interest and costs.

(5) A licensed mortgage loan originator who fails to submit to the commissioner the reports required under section 33(3) is subject to a penalty of \$25.00 for each day a required report is delinquent or \$1,000.00, whichever is less.

(6) A mortgage loan originator license renewal fee that is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(7) Money received from the fees described in this section shall be deposited in the MBLSLA fund. As used in this subsection, "MBLSLA fund" means the restricted account created under section 8(8) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1658.

(8) The annual operating fees set by the commissioner shall not exceed the levels needed to cover the estimated cost of enforcement of this act.

History: 2009, Act 75, Eff. July 31, 2009

493.151 Mortgage loan originators; license and registration through nationwide mortgage licensing system and registry; rules.

Sec. 21.

In addition to any other duties imposed on the commissioner under this act, the commissioner shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. To carry out this requirement, the commissioner is authorized to participate in the nationwide mortgage licensing system and registry and may by rule establish other requirements that he or she considers necessary, including, but not limited to, any of the following:

(a) Background checks for any of the following:

- (i) The criminal history of a licensed mortgage loan originator or license applicant through fingerprint or other databases.
- (ii) Information about a licensed mortgage loan originator or license applicant in civil or administrative records.
- (iii) A licensed mortgage loan originator's or license applicant's credit history.
- (iv) Any other information about a licensed mortgage loan originator or license applicant considered necessary by the nationwide mortgage licensing system and registry.
- (b) The payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry.
- (c) The setting or resetting as necessary of renewal or reporting dates.
- (d) Requirements for amending or surrendering a license or any other activities that the commissioner considers necessary for participation in the nationwide mortgage licensing system and registry.

History: 2009, Act 75, Eff. July 31, 2009

493.153 Process for challenging information entered.

Sec. 23.

The commissioner shall establish a process through which mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the commissioner.

History: 2009, Act 75, Eff. July 31, 2009

493.155 Powers of commissioner; finding of violation or noncompliance; fine.

Sec. 25.

(1) To ensure the effective supervision and enforcement of this act, the commissioner may do any of the following, in a manner consistent with the requirements of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328:

(a) Deny, suspend, revoke, condition, or decline to renew a license for a violation of this act, rules issued under this act, or an order or directive entered under this act.

(b) Deny, suspend, revoke, condition, or decline to renew a license if a licensed mortgage loan originator or license applicant fails at any time to meet the requirements of section 9 or 15 or withholds information or makes a material misstatement in an application for a license or renewal of a license.

(c) Order restitution against a person that is subject to this act for a violation of this act.

(d) Subject to subsections (2), (3), and (4), impose a civil fine on a person that is subject to this act.

(e) Issue any of the following orders or directives under this act:

(i) Order or direct a person that is subject to this act to cease and desist from conducting business, including an immediate temporary order to cease and desist.

(ii) Order or direct a person that is subject to this act to cease any harmful activities or violations of this act, including an immediate temporary order to cease and desist.

(iii) Enter an immediate temporary order to cease business under a license or interim license issued pursuant to the authority granted under section 5(4), if the commissioner determines that the license or interim license was erroneously granted or the licensed mortgage loan originator is currently in violation of this act.

(iv) Issue an order under section 27.

(v) Order or direct any other affirmative action that the commissioner considers necessary.

(2) The commissioner may impose a civil fine on a mortgage loan originator or other person subject to this act, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or other person has violated or failed to comply with a requirement of this act, a rule promulgated by the commissioner under this act, or an order issued under the authority of this act.

(3) The maximum fine for each violation or failure to comply described in subsection (2) is \$25,000.00.

(4) Each violation or failure to comply described in subsection (2) is a separate and distinct violation or failure.

493.157 Fraud; notice of intent to prohibit licensure; contents; hearing; order; service; application to terminate order; imminent threat of financial loss to customers; conviction of felony; mailing of notice or issued to employer or principal; decision; judicial review; enforcement; violation of final order; "fraud" defined.

Sec. 27.

(1) If in the opinion of the commissioner an individual has engaged in fraud, the commissioner may serve on that person a written notice of intention to prohibit that individual from being licensed under this act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), shall set a hearing on a date within 60 days after the date of the notice. If the individual does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being licensed under this act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts.

(4) An order issued under subsection (2) or (3) is effective when served on an individual. The commissioner shall also serve a copy of the order upon the licensee of which the individual is an employee or agent. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the individual subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that an individual served a notice under subsection (1) poses an imminent threat of financial loss to customers, the commissioner may serve on that individual an order of suspension from being employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect until the commissioner completes the review required under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the individual served with an order issued under subsection (6), the commissioner shall hold the hearing required under subsection (2) to review the suspension not earlier than 5 days or later than 20 days after the date of the notice.

(8) If an individual is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting him or her from being licensed under this act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts. After 5 years from the date of the order, the individual subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the employer or principal of the individual subject to the notice or order.

(10) Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that includes findings of fact supporting the decision and serve on each party to the proceeding a copy of the decision and an order consistent with the decision.

(11) Except for a consent order, a party to the proceeding or a person affected by an order issued under this section may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(12) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (11) does not stay the commissioner's order.

(13) The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under this section.

(14) Any individual who violates a final order issued under this section is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

(15) As used in this section, "fraud" includes actionable fraud, actual or constructive fraud, criminal fraud,

extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

History: 2009, Act 75, Eff. July 31, 2009

493.159 Surety bond.

Sec. 29.

(1) Subject to subsection (2), each mortgage loan originator must provide to the commissioner or be covered by a surety bond that meets the requirements of subsection (5). A surety bond provided under this subsection shall provide coverage for the mortgage loan originator in 1 of the following amounts:

(a) If the mortgage loan originator did not originate any mortgage loans in the preceding calendar year, or the sum of the principal amounts of mortgage loans originated by the mortgage loan originator in the preceding calendar year is less than \$12,000,000.00, as determined by the commissioner, \$10,000.00.

(b) If the sum of the principal amounts of mortgage loans originated by the mortgage loan originator in the preceding calendar year is \$12,000,000.00 or more and less than \$24,000,000.00, as determined by the commissioner, \$25,000.00.

(c) If the sum of the principal amounts of mortgage loans originated by the mortgage loan originator in the preceding calendar year is \$24,000,000.00 or more, as determined by the commissioner, \$50,000.00.

(2) If a mortgage loan originator is an employee or exclusive agent of a sponsor and that sponsor provides the commissioner with a surety bond that satisfies the requirements of subsection (5), the commissioner may accept that surety bond in lieu of the mortgage loan originator's surety bond obligation under subsection (1). The principal amount of a surety bond provided under this subsection shall provide coverage for all of the sponsor's mortgage loan originators in 1 of the following amounts:

(a) If the sum of the principal amounts of mortgage loans closed or modified by the sponsor in the preceding calendar year is less than \$12,000,000.00, as determined by the commissioner, \$50,000.00.

(b) If the sum of the principal amounts of mortgage loans closed or modified by the sponsor in the preceding calendar year is \$12,000,000.00 or more and less than \$24,000,000.00, as determined by the commissioner, \$150,000.00.

(c) If the sum of the principal amounts of mortgage loans closed or modified by the sponsor in the preceding calendar year is \$24,000,000.00 or more, as determined by the commissioner, \$250,000.00.

(3) The license of a mortgage loan originator who fails to meet the requirements of section 9(1)(g) or (h) is automatically subject to a condition that he or she may not originate mortgage loans under this act. A mortgage loan originator who is subject to a condition described in this subsection shall immediately cease originating mortgage loans and shall not originate mortgage loans until that condition is removed by the commissioner.

(4) Before the end of a calendar quarter, a sponsor that provides a surety bond under subsection (2) for its employees and exclusive agents shall submit a report to the commissioner that contains all of the following information about the surety bond in effect for the next calendar quarter:

(a) The name and unique identifier of the sponsor.

(b) The name of the surety issuing the bond.

(c) For each mortgage loan originator covered by the bond, his or her legal name, exactly as filed with the nationwide mortgage licensing system and registry, and unique identifier.

(5) All of the following apply to a surety bond provided under subsection (1) or (2):

(a) The bond shall be in a form as prescribed by the commissioner.

(b) The commissioner may promulgate rules with respect to the requirements for surety bonds under this section that the commissioner determines are necessary to accomplish the purposes of this act.

(c) If an action is commenced on a bond described in this section, the commissioner may require the filing of a new bond. If there is a recovery in that action, the mortgage loan originator or sponsor described in subsection (2) shall immediately provide to the commissioner a new surety bond that meets the requirements of this section.

History: 2009, Act 75, Eff. July 31, 2009 ;-- Am. 2010, Act 356, Imd. Eff. Dec. 22, 2010 ;-- Am. 2012, Act 150, Imd. Eff. May 30, 2012

493.161 Privacy or confidentiality of information or material.

Sec. 31.

(1) Except as otherwise provided in section 1512 of the SAFE act, 12 USC 1511, the requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, or any federal law concerning the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law or the rules of any federal or state court concerning that information or material shall continue to apply to that information or material after the information or material is disclosed to the nationwide mortgage licensing system and registry. Any information or material described in this section may be shared with any state and federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) For purposes of this section, the commissioner may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies, as established by rule or order of the commissioner.

(3) Any information or material that is subject to a privilege or confidentiality under subsection (1) shall not be subject to any of the following:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state.

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to the information or material, the person to which the information or material pertains waives, in whole or in part, in that person's discretion, that privilege.

(4) This section does not apply to any information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a mortgage loan originator that is included in the nationwide mortgage licensing system and registry for access by the public.

History: 2009, Act 75, Eff. July 31, 2009

493.163 Investigations and examinations; access to books and records; reports; control of access to documents or records; duties and authority of commissioner; prohibited conduct by licensed mortgage loan originator or person subject to investigation.

Sec. 33.

(1) In addition to any authority provided under this act, the commissioner may conduct any of the following investigations and examinations:

(a) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this act, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to, any of the following:

(i) Criminal, civil, and administrative history information.

(ii) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency, as defined in section 603 of the fair credit reporting act, 15 USC 1681a.

(iii) Any other documents, information, or evidence the commissioner considers relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of those documents, information, or evidence.

(b) For purposes of investigating violations or complaints arising under this act, or for the purposes of examination, the commissioner may review, investigate, or examine any licensed mortgage loan originator or other person subject to this act as often as necessary in order to carry out the purposes of this act. The commissioner may direct, subpoena, or order the attendance of and examine under oath any person whose testimony may be required about the loans or the business or subject matter of that examination or investigation and may direct, subpoena, or order that person to produce books, accounts, records, files, and any other documents that the commissioner considers relevant to the inquiry.

(2) Each licensed mortgage loan originator or other person subject to this act shall make available to the commissioner on request the books and records relating to the operations of that licensed mortgage loan originator or other person. The commissioner shall have access to those books and records and may interview the officers,

principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensed mortgage loan originator or other person concerning the business of the licensed mortgage loan originator or other person.

(3) Each licensed mortgage loan originator or other person subject to this act shall make or compile reports or prepare other information requested by the commissioner in order to carry out the purposes of this section, including, but not limited to, any of the following:

- (a) Accounting compilations.
- (b) Information lists and data concerning loan transactions, in a format prescribed by the commissioner.
- (c) Any other information the commissioner considers necessary to carry out the purposes of this section.

(4) In making any examination or investigation authorized by this act, the commissioner may control access to any documents and records of the licensed mortgage loan originator or other person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept.

(5) If the commissioner is controlling access to documents or records under subsection (4), a person shall not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe that the documents or records of the licensed mortgage loan originator or other person have been or are at risk of being altered or destroyed for purposes of concealing a violation of this act, the licensed mortgage loan originator or other person or the owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(6) For purposes of this section, the commissioner may do any of the following:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations.

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section.

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensed mortgage loan originator or other person subject to this act.

(d) Accept and rely on examination or investigation reports made by other state or federal government officials.

(e) Accept audit reports prepared by an independent certified public accountant for the licensed mortgage loan originator or other person subject to this act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(7) The commissioner's authority under this section remains in effect whether a licensed mortgage loan originator or other person subject to this act acts or claims to act under any licensing or registration law of this state or claims to act without that authority.

(8) A licensed mortgage loan originator or other person subject to investigation or examination under this section shall not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information from the commissioner.

History: 2009, Act 75, Eff. July 31, 2009

493.165 Licensed mortgage loan originator; prohibited conduct.

Sec. 35.

A licensed mortgage loan originator shall not do any of the following:

(a) Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

(b) Intentionally, or due to gross or wanton negligence, repeatedly fail to provide borrowers with any material disclosures of information required by law.

(c) Directly or indirectly make a false, misleading, or deceptive advertisement regarding mortgage loans or the availability of mortgage loans.

(d) Suppress or withhold from the commissioner any information that he or she possesses and that, if submitted, would have made him or her ineligible for licensure or license renewal under this act at the time of application and would have allowed the commissioner to refuse to license him or her.

(e) Be convicted of, or plead no contest to, any of the following:

(i) A misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement, forgery, a financial transaction, or securities.

(ii) A felony.

(f) Refuse or fail to furnish any information or make any report required by the commissioner to issue or renew a license under this act, or otherwise required by the commissioner, within a reasonable period of time, as determined by the commissioner, after requested by the commissioner.

History: 2009, Act 75, Eff. July 31, 2009

493.167 Reports of condition.

Sec. 37.

A licensed mortgage loan originator, or employer or principal of a licensed mortgage loan originator on his or her behalf, shall submit to the nationwide mortgage licensing system and registry reports of condition. The reports of condition shall be in the form and shall contain the information required by the nationwide mortgage licensing system and registry.

History: 2009, Act 75, Eff. July 31, 2009

493.169 Report of violations; rules.

Sec. 39.

(1) Subject to section 31, the commissioner shall regularly report violations of this act, and enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry.

(2) The commissioner shall comply with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in promulgating any rules under this act.

History: 2009, Act 75, Eff. July 31, 2009

493.171 Unique identifier of originator of residential mortgage loan.

Sec. 41.

The unique identifier of any person originating a residential mortgage loan in this state shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents, as established by rule or order of the commissioner.

History: 2009, Act 75, Eff. July 31, 2009

CREDIT CARD ARRANGEMENTS

Act 379 of 1984

AN ACT to define and regulate certain credit card transactions, agreements, charges, and disclosures; to provide

for the powers and duties of certain state officers and entities; to provide for the promulgation of rules; and to provide remedies and penalties.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984 ;-- Am. 2020, Act 76, Imd. Eff. Apr. 2, 2020

The People of the State of Michigan enact:

493.101 Definitions.

Sec. 1.

As used in this act:

(a) "Commissioner" means the director of the department of insurance and financial services or his or her authorized representative.

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

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

(d) "Credit card arrangement" means a loan or extension of credit that meets all of the following:

(i) Is unsecured.

(ii) Is made for a personal, family, or household purpose.

(iii) Is made to the holder of a credit card or charge card who is an individual.

(iv) Requires use of a credit card or charge card authorized under this act to access the proceeds of the loan or extension of credit.

(e) "Credit card" or "charge card" means any card or device that is issued by a licensee under a credit card arrangement that allows the cardholder to obtain credit from the card issuer or any other person to purchase or lease property or services, obtain a loan or credit, or for any other purpose.

(f) "Truth in lending act" means the truth in lending act, 15 USC 1601 to 1667f.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984 ;-- Am. 2020, Act 76, Imd. Eff. Apr. 2, 2020

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.102 Credit card arrangement; license required; terms and conditions.

Sec. 2.

(1) Except for a person licensed under the consumer financial services act, a person shall not make or negotiate, or offer to make or negotiate, a credit card arrangement unless that person is licensed as provided in this act.

(2) A licensee shall not make or offer to make a credit card arrangement except on the terms and conditions authorized by this act and the rules promulgated under this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984 ;-- Am. 1988, Act 165, Eff. Sept. 1, 1988

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.103 Application for license; oath; form; contents; fees; net worth requirements; rules.

Sec. 3.

(1) An application for a license under this act shall be in writing, under oath, and in the form prescribed by the commissioner.

(2) The application shall state the name, residence, and business addresses of the applicant; if the applicant is a partnership or association, of each member; and if a corporation, of each officer, director, and stockholder. The commissioner may exempt publicly held corporations from the requirement to provide information regarding stockholders. The application shall include other information the commissioner requires.

(3) At the time of making an application, the applicant shall pay to the commissioner an investigation fee and, at the time of application and annually thereafter, an annual license fee as provided in section 7.

(4) Each application for a license shall be accompanied by financial statements, reasonably satisfactory to the commissioner, showing that the applicant's net worth exceeds \$1,000,000.00. A licensee shall continue to maintain the stated net worth requirement while engaging in credit card arrangements and the commissioner may subsequently adopt rules establishing a higher net worth requirement to assure safe, sound operation of credit card arrangements authorized by this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984 ;-- Am. 1992, Act 75, Imd. Eff. June 2, 1992

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.104 Investigation; finding; issuance of license; refusal to issue license; expiration of license.

Sec. 4.

(1) Upon the filing of an application and the payment of the required fees, the commissioner shall investigate the facts. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the applicant's members if the applicant is a partnership or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business shall be operated lawfully, honestly, fairly, and efficiently within the purposes of this act, the commissioner shall issue and deliver to the applicant a license to engage in credit card arrangements.

(2) The commissioner may refuse to issue a license for any reason for which the commissioner may suspend, revoke, or refuse to renew a license under section 6.

(3) A license expires on December 31 each year.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.105 Duties of commissioner upon refusal to issue license.

Sec. 5.

If the commissioner refuses to issue a license, the commissioner shall:

(a) Notify the applicant of the denial and of the applicant's right to request a hearing within 10 days.

(b) If the applicant does not request a hearing, return the sum paid as a license fee.

(c) If the applicant requests a hearing, give notice of the grounds for refusal and hold a hearing on the refusal. Within 60 days after the hearing the commissioner shall file a written decision containing his or her findings and conclusions and serve a copy upon the applicant.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.106 Suspension, revocation, or refusal to renew license; notice; grounds; surrender of license; duration of license; reinstatement or issuance of new license; preexisting lawful contracts.

Sec. 6.

(1) The commissioner may suspend, revoke, or refuse to renew a license. The commissioner shall give the licensee 10 days' notice in writing, forwarded by certified mail to the principal place of business of the licensee, stating the contemplated action and in general the reason for that action. The licensee shall also be notified that the contemplated action shall be effective after a reasonable opportunity to be heard, if the commissioner finds that the licensee or an owner, director, officer, member, partner, stockholder, employee, or agent of the licensee has done any of the following:

- (a) Made a material misstatement in the application.
- (b) Committed fraud, engaged in a dishonest activity, or misrepresented or failed to disclose any material particular of a credit card arrangement transaction to a person entitled to the information.
- (c) Failed after 10 days' written notice of default, to pay the annual license fee; or to comply with a demand, ruling, or requirement of the commissioner lawfully made pursuant to this act.
- (d) Either knowingly or without the exercise of due care to prevent it, violated this act or a rule promulgated by the commissioner under this act.
- (e) Otherwise demonstrated unworthiness, bad faith, dishonesty, or any other quality indicating that the business of the licensee has not been or may not be conducted honestly, fairly, equitably, and efficiently within the purposes and intent of this act.

(2) The commissioner may suspend, revoke, or refuse to renew a license upon a finding of a fact or condition which, if the fact or condition had existed at the time of the original application for the license, clearly would have warranted the commissioner to refuse to issue the license originally.

(3) A licensee may surrender a license by delivering it to the commissioner with written notice of surrender. A surrender of a license shall not affect the licensee's civil or criminal liability for acts committed before the surrender.

(4) A license remains in force until the date of expiration or until surrendered, revoked, or suspended pursuant to this act. The commissioner may reinstate a suspended license or issue a new license to a licensee whose license has been revoked if the conditions under which the license was revoked have been corrected and the commissioner is satisfied, as the result of an investigation, that the conditions are not likely to recur.

(5) The suspension, revocation, nonrenewal, or surrender of a license shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.107 Investigations and examination of books, accounts, records, and files; electronic data processing not prohibited; establishment of annual fee schedule; fees nonrefundable; penalty; disposition and use of fees and expenses; action for recovery of fees or expenses.

Sec. 7.

(1) The commissioner may, at any time, make necessary investigations and examine the books, accounts, records, and files of the licensee. This section shall not be construed to prohibit keeping of records by electronic data processing methods. A licensee shall pay an examination fee for examination of its records conducted by the commissioner as provided by this section. The examination fee shall be invoiced upon the completion of the examination and is due and payable upon receipt of the invoice by the licensee. A licensee is not required to pay more than 1 examination fee in a calendar year.

(2) The commissioner shall annually establish the schedule of fees sufficient to pay the bureau's costs of administering this act. The fees are as follows:

- (a) For the investigation of an applicant for a license, not less than \$200.00 or more than \$600.00.
- (b) For the application and annual renewal of a license, not less than \$300.00 or more than \$800.00.
- (c) For amending a license, not less than \$20.00 or more than \$75.00.

(d) For examination of the licensee, not less than \$40.00 or more than \$70.00 per hour for each examiner involved in an examination. In addition, a licensee shall pay the actual travel and lodging expenses incurred by bureau employees who travel out of Michigan to examine the records of the licensee.

(3) Fees received pursuant to this act are not refundable.

(4) A license renewal fee paid after December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(5) Money received under this act shall be paid into the state treasury to the credit of the financial institutions bureau to be used only for the operation of the financial institutions bureau.

(6) If any fees or expenses provided for under this act are not paid when required, the attorney general may maintain an action against the delinquent licensee for the recovery of the fees or expenses together with interest and costs.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984 ;-- Am. 1992, Act 75, Imd. Eff. June 2, 1992

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.108 Subpoena of witnesses and evidence; oaths and affirmations; noncompliance; order; contempt.

Sec. 8.

(1) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence, in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to a person whose testimony is required.

(2) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence. The court may punish by contempt a person who fails to obey the court's order.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.109 Books, accounts, and records; maintenance, preservation, and availability; audit; cost.

Sec. 9.

(1) A licensee shall maintain records relating to all transactions under this act so that the commissioner may enforce full compliance with this act. Books and accounts kept at the licensee's principal place of business shall be made available to the commissioner upon request or the licensee shall pay for an examiner to go to the place where the records are kept.

(2) The books, accounts, and records of the licensee shall be preserved and kept available for not less than 1 year after making the final entry on any loan recorded in the books, accounts, or records. The commissioner may for reasonable cause order an independent audit of the books and records of a licensee and the cost of the audit shall be an expense of the licensee.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.110 Maximum interest; computation; fee; offer of loan or credit in connection with other accounts, services, or similar agreements; prohibited conditions.

Sec. 10.

(1) On a loan made or credit extended pursuant to a credit card arrangement, a licensee may collect interest not to exceed 1.5% of the unpaid balance per month. The interest shall not be precomputed but computed from time to time on the basis of the unpaid balances. In addition to collecting the interest permitted by this subsection, a licensee may assess a fee for the privilege of having a credit card or charge card if the fee is not computed as a percentage of the unpaid balance.

(2) A loan made or credit extended pursuant to a credit card arrangement authorized by this act may be offered in connection with other accounts, services, or other similar agreements not regulated by this act or any other applicable statute. A licensee may offer for sale and finance credit life insurance or credit accident and health insurance as defined in the credit insurance act, Act No. 173 of the Public Acts of 1958, being sections 550.601 to 550.624 of the Michigan Compiled Laws, or any other insurance pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

(3) The making of a loan or extension of credit pursuant to a credit card arrangement shall not be conditioned on the requirement that insurance as described in subsection (2) be obtained or that any other goods or services be purchased as a condition of the privilege of obtaining a credit card or charge card.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984 ;-- Am. 1987, Act 171, Imd. Eff. Nov. 16, 1987 ;-- Am. 1994, Act 386, Eff. Mar. 30, 1995

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.111 Truth in lending act; disclosures, information, and notices; applicability.

Sec. 11.

(1) A licensee shall make or give to the consumer the disclosures, information, and notices required by the truth in lending act for a credit card arrangement that is governed by this act.

(2) To the extent that the truth in lending act does not impose duties or obligations upon a person for an account established for personal, household, or family purposes in a credit card arrangement that is governed by this act, the person shall make or give to the consumer disclosures, information, and notices in accordance with the federal truth in lending act with respect to the credit transaction.

(3) The truth in lending act shall apply to a credit transaction for which this act authorizes the collection of charges or interest notwithstanding its inclusion in a class of transactions within this state which, by regulation of the board of governors of the federal reserve system, is exempt from the truth in lending act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.112 Wilful and intentional violation as misdemeanor; conduct barring recovery and entitling consumer to attorney fees and court costs; authorized actions.

Sec. 12.

(1) Any licensee who wilfully and intentionally violates this act shall be guilty of a misdemeanor.

(2) Any licensee who enters into a credit card arrangement which does not comply with sections 10 and 11 or who violates section 10 or 11, except as a result of accidental or bona fide error, is barred from the recovery of any interest or other charges, attorney fees, or court costs and the consumer shall be entitled to recover reasonable attorney fees and court costs from the licensee.

(3) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Enjoin in accordance with the principal of equity a person who is engaging or is about to engage in a method, act, or practice which violates this act.

(c) Except as limited by subdivision (d), recover actual damages resulting from a violation of this act, or \$250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action. Recovery in class actions shall be limited to actual damages without attorneys' fees and the cost of bringing the action.

(d) If the licensee establishes by a preponderance of the evidence that the failure to comply with sections 10 and 11 or the violation of section 10 or 11 was not wilful and intentional, the amount recovered pursuant to subdivision (c) shall not exceed actual damages.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.113 Rules.

Sec. 13.

The commissioner may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, as necessary for the administration and enforcement of this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.114 Exemptions; credit card or charge card issued prior to effective date of act.

Sec. 14.

(1) A state or national bank, state or federal savings and loan association, state or federal credit union, or a retail seller or other creditor under Act No. 224 of the Public Acts of 1966, being sections 445.851 to 445.873 of the Michigan Compiled Laws, shall not be subject to the provisions of this act except that, to the extent such a lender is authorized by law to use the rate authority provided in this act and uses the rate authority provided in section 10, the lender shall also comply with the other provisions of section 10 and with section 11.

(2) A person holding a credit card or charge card issued prior to the effective date of this act may continue to use the credit card or charge card according to the terms of the contract until modified as permitted under this act and shall continue to be liable for loans or credit extended pursuant to any such contract.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.