

1998 PUBLIC AND LOCAL ACTS

[No. 371]

(HB 5783)

AN ACT to amend 1987 PA 173, entitled "An act to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of the financial institutions bureau and certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties," by amending section 25 (MCL 445.1675), as amended by 1996 PA 210, and by adding section 25a.

The People of the State of Michigan enact:

445.1675 Applicability of act. [M.S.A. 23.1125(75)]

Sec. 25. This act does not apply to any of the following:

(a) A depository financial institution whether or not the depository financial institution is acting in a capacity of a trustee or fiduciary.

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

(c) A real estate broker or real estate salesperson who is not a mortgage broker, mortgage lender, or mortgage servicer, or who only acts as a mortgage broker in connection with a real estate sale or lease and acts without additional compensation beyond the customary commission on the sales or leases.

(d) A real estate salesperson who acts for a real estate broker as a mortgage broker, mortgage lender, or mortgage servicer and who receives for the services compensation only from the real estate broker for which the salesperson is an agent or employee.

(e) A person licensed under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, not making, brokering, or servicing mortgage loans as described in this act in a 12-month period from July 1 to June 30.

(f) Agencies or corporate instrumentalities of the United States and of this state and its political subdivisions, including the public employees' retirement system.

(g) A mortgage lender that in the aggregate with any affiliates makes 10 or fewer mortgage loans in a 12-month period from July 1 to June 30.

(h) A mortgage servicer that in the aggregate with any affiliates services 10 or fewer mortgage loans in a 12-month period from July 1 to June 30.

(i) A mortgage servicer that in the aggregate with any affiliates services only 75 or fewer land contracts, of which 10 or fewer require the collection of money for the payment of taxes or insurance. This subdivision and subdivision (h) do not exempt a mortgage servicer who collects money for the payment of taxes or insurance from the provisions of 1966 PA 125, MCL 565.161 to 565.164. All fees shall be returned to any mortgage servicer described in this subdivision who applied for a license and paid the fees required by this act and who on December 27, 1988 is exempted from licensing.

(j) An individual licensed to practice law in this state and not engaged in the business of negotiating loans secured by real property, when the individual renders services in the course of his or her practice as an attorney-at-law.

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(k) A person who makes mortgage loans exclusively for the benefit of employees of that person if the proceeds of the loan are used to assist the employee in meeting his or her housing needs.

(l) A person acting as a fiduciary with respect to any employee pension benefit plan qualified under the internal revenue code who makes mortgage loans solely to plan participants from plan assets.

(m) A mortgage broker, mortgage lender, or a mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution which depository financial institution maintains its main office or a branch office in this state.

(n) 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.

(o) A person determined by the commissioner to meet the qualifications established under section 25a.

445.1675a Exemptions; filing affidavit; failure to meet qualifications.
[M.S.A. 23.1125(75a)]

Sec. 25a. (1) Except for the requirements of section 23, the commissioner may exempt from the requirements of this act a person the commissioner believes merits the confidence of the community and demonstrates all of the following:

(a) Is exempt from federal income taxes under section 501(c) of the internal revenue code of 1986.

(b) Administers a mortgage loan program funded or sponsored by 1 or more depository financial institutions, state or federal governmental entities, or charitable, religious, or other nonprofit organizations.

(c) Its mortgage loan program is targeted exclusively to persons that would not otherwise have access to affordable mortgage loans from traditional mortgage lending sources.

(d) Its housing development efforts have the support of the agency of its local governmental jurisdiction responsible for community development.

(e) Its mortgage lending activity is limited to a defined geographic area in this state, not larger than a county in the case of a metropolitan statistical area.

(f) Has the capacity to accomplish its business plan.

(g) Does not directly or indirectly share with another person any portion of fees paid to the organization in connection with a mortgage loan.

(h) That it will comply with state and federal law and with the spirit and intent of section 22a.

(i) Does not service mortgage loans.

(2) Notwithstanding subsection (1)(i), the commissioner may issue an exemption to a person that services mortgage loans if the person has complied with subsection (1)(a) through (h) and the commissioner determines the exemption is in the public interest.

(3) Not later than February 1 of every second year following the commissioner's determination that an organization meets the qualifications under subsection (1) or (2), the organization shall file an affidavit that it continues to meet the qualifications.

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(4) An organization that has been determined to meet the qualifications of subsection (1) or (2) and subsequently fails to meet 1 or more of those qualifications shall within 90 days register or file an application for license under section 3(1) or discontinue activities that would require registration or licensure under this act.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5784 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved October 20, 1998.

Filed with Secretary of State October 20, 1998.

Compiler's note: House Bill No. 5784, referred to in enacting section 1, was filed with the Secretary of State October 20, 1998, and became P.A. 1998, No. 372, Imd. Eff. Oct. 20, 1998.
