

## **MEMORANDUM**

**Date:** June 2, 2006  
**To:** The Honorable Fran Amos, State Representative  
**Attn:** Gabe Basso  
**From:** Dale A. Mattis, Legal Counsel *DAM/bd*  
**Re:** Bill Request No. 07003'06 Draft 1 - residential mortgage fraud

As you review the enclosed draft, please consider the following:

- This draft is intended as a starting point for your review. It might address issues that you will not want addressed in the blueback or not address issues that you will want addressed in the blueback. Please feel free to request changes.
- This draft is derived from the Georgia statute provided with your bill request. I attempted in this draft to match the terminology and structure of our state statutes. The draft also omits the parts of the Georgia statute that we do not generally include in statutes here, such as the findings and declaration section; the short title (we do not name individual chapters or sections of the Michigan penal code); and the statement of concurrent jurisdiction of the attorney general and county prosecutors for prosecuting crimes. Please let me know if changes are necessary to reflect your intent.
- I have requested a sentencing guidelines companion bill on your behalf, to add these new felonies to the sentencing guideline chart in section 16l of chapter XVII of the code of criminal procedure, 1927 PA 175, MCL 777.16l.

Please call me at 3-9425 when you are ready to proceed with another draft or a blueback or if you have any questions.

DAM:bd

Enclosure

DRAFT 1

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 159g (MCL 750.159g), as amended by 2002 PA 124,  
and by adding section 219d.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 159g. As used in this chapter, "racketeering" means  
2 committing, attempting to commit, conspiring to commit, or aiding  
3 or abetting, soliciting, coercing, or intimidating a person to  
4 commit an offense for financial gain, involving any of the  
5 following:

6           (a) A felony violation of section 8 of the tobacco products  
7 tax act, 1993 PA 327, MCL 205.428, concerning tobacco product  
8 taxes, or section 9 of former 1947 PA 265, concerning cigarette  
9 taxes.



1 (b) A violation of section 11151(3) of the natural resources  
2 and environmental protection act, 1994 PA 451, MCL 324.11151, or  
3 section 48(3) of former 1979 PA 64, concerning felonious disposal  
4 of hazardous waste.

5 (c) A felony violation of part 74 or section 17766a of the  
6 public health code, 1978 PA 368, MCL 333.7401 to 333.7461 and  
7 333.17766a, concerning controlled substances or androgenic anabolic  
8 steroids.

9 (d) A felony violation of section 60 of the social welfare  
10 act, 1939 PA 280, MCL 400.60, concerning welfare fraud.

11 (e) A violation of section 4, 5, or 7 of the medicaid false  
12 claim act, 1977 PA 72, MCL 400.604, 400.605, and 400.607,  
13 concerning medicaid fraud.

14 (f) A felony violation of section 18 of the Michigan gaming  
15 control and revenue act, the Initiated Law of 1996, MCL 432.218,  
16 concerning the business of gaming.

17 (g) A violation of section 409 of the uniform securities act,  
18 1964 PA 265, MCL 451.809, concerning securities fraud.

19 (h) A violation of section 5 or 7 of 1978 PA 33, MCL 722.675  
20 and 722.677, concerning the display or dissemination of obscene  
21 matter to minors.

22 (i) A felony violation of section 72, 73, 74, 75, or 77,  
23 concerning arson.

24 (j) A violation of section 93, 94, 95, or 96, concerning bank  
25 bonds, bills, notes, and property.

26 (k) A violation of section 110 or 110a, concerning breaking  
27 and entering or home invasion.



1 (l) A violation of section 117, 118, 119, 120, 121, or 124,  
2 concerning bribery.

3 (m) A violation of section 120a, concerning jury tampering.

4 (n) A violation of section 145c, concerning child sexually  
5 abusive activity or material.

6 (o) A felony violation of section 157n, 157p, 157q, 157r,  
7 157s, 157t, or 157u, concerning credit cards or financial  
8 transaction devices.

9 (p) A felony violation of section 174, 175, 176, 180, 181, or  
10 182, concerning embezzlement.

11 (q) A felony violation of chapter XXXIII, concerning  
12 explosives and bombs.

13 (r) A violation of section 213, concerning extortion.

14 (s) A felony violation of section 218, concerning false  
15 pretenses.

16 **(T) A VIOLATION OF SECTION 219D, CONCERNING RESIDENTIAL**  
17 **MORTGAGE FRAUD.**

18 (U) ~~(t)~~ A felony violation of section 223(2), 224(1)(a),  
19 (b), or (c), 224b, 224c, 224e(1), 226, 227, 234a, 234b, or 237a,  
20 concerning firearms or dangerous weapons.

21 (V) ~~(u)~~ A felony violation of chapter XLI, concerning  
22 forgery and counterfeiting.

23 (W) ~~(v)~~ A violation of section 271, 272, 273, or 274,  
24 concerning securities fraud.

25 (X) ~~(w)~~ A violation of section 300a, concerning food stamps  
26 or coupons or access devices.

27 (Y) ~~(x)~~ A violation of section 301, 302, 303, 304, 305,



1 305a, or 313, concerning gambling.

2 (Z) ~~-(y)-~~ A violation of section 316 or 317, concerning  
3 murder.

4 (AA) ~~-(z)-~~ A violation of section 330, 331, or 332, concerning  
5 horse racing.

6 (BB) ~~-(aa)-~~ A violation of section 349, 349a, or 350,  
7 concerning kidnapping.

8 (CC) ~~-(bb)-~~ A felony violation of chapter LII, concerning  
9 larceny.

10 (DD) ~~-(ee)-~~ A violation of section 411k, concerning money  
11 laundering.

12 (EE) ~~-(dd)-~~ A violation of section 422, 423, 424, or 425,  
13 concerning perjury or subornation of perjury.

14 (FF) ~~-(ee)-~~ A violation of section 452, 455, 457, 458, or 459,  
15 concerning prostitution.

16 (GG) ~~-(ff)-~~ A violation of section 529, 529a, 530, or 531,  
17 concerning robbery.

18 (HH) ~~-(gg)-~~ A felony violation of section 535, 535a, or 536a,  
19 concerning stolen, embezzled, or converted property.

20 (II) ~~-(hh)-~~ A violation of chapter LXXXIII-A, concerning  
21 terrorism.

22 (JJ) ~~-(ii)-~~ A violation of section 5 of 1984 PA 343, MCL  
23 752.365, concerning obscenity.

24 (KK) ~~-(jj)-~~ An offense committed within this state or another  
25 state that constitutes racketeering activity as defined in ~~section~~  
26 ~~1961(1) of title 18 of the United States Code, 18 U.S.C. 1961- 18~~  
27 **USC 1961(1).**



1           (II) ~~(kk)~~ An offense committed within this state or another  
 2 state in violation of a law of the United States that is  
 3 substantially similar to a violation listed in subdivisions (a)  
 4 through ~~(ii)~~ (JJ).

5           (MM) ~~(H)~~ An offense committed in another state in violation  
 6 of a statute of that state that is substantially similar to a  
 7 violation listed in subdivisions (a) through ~~(ii)~~ (JJ).

8           **SEC. 219D. (1) A PERSON WHO WITH THE INTENT TO DEFRAUD DOES**  
 9 **ANY OF THE FOLLOWING IS GUILTY OF THE CRIME OF RESIDENTIAL MORTGAGE**  
 10 **FRAUD PUNISHABLE AS PROVIDED IN THIS SECTION:**

11           (A) KNOWINGLY MAKES ANY DELIBERATE MISSTATEMENT,  
 12 MISREPRESENTATION, OR OMISSION DURING THE MORTGAGE LENDING PROCESS  
 13 WITH THE INTENTION THAT IT BE RELIED ON BY A MORTGAGE LENDER,  
 14 BORROWER, OR ANY OTHER PARTY TO THE MORTGAGE LENDING PROCESS.

15           (B) KNOWINGLY USES OR FACILITATES THE USE OF ANY DELIBERATE  
 16 MISSTATEMENT, MISREPRESENTATION, OR OMISSION, KNOWING THAT IT  
 17 CONTAINS A MISSTATEMENT, MISREPRESENTATION, OR OMISSION, DURING THE  
 18 MORTGAGE LENDING PROCESS WITH THE INTENTION THAT IT BE RELIED ON BY  
 19 A MORTGAGE LENDER, BORROWER, OR ANY OTHER PARTY TO THE MORTGAGE  
 20 LENDING PROCESS.

21           (C) RECEIVES ANY PROCEEDS OR ANY OTHER MONEY IN CONNECTION  
 22 WITH A RESIDENTIAL MORTGAGE CLOSING THAT THE PERSON KNEW RESULTED  
 23 FROM A VIOLATION OF SUBDIVISION (A) OR (B).

24           (D) CONSPIRES TO VIOLATE ANY OF THE PROVISIONS OF SUBDIVISION  
 25 (A), (B), OR (C).

26           (E) FILES OR CAUSES TO BE FILED WITH THE REGISTER OF DEEDS OF  
 27 ANY COUNTY OF THIS STATE ANY DOCUMENT THE PERSON KNOWS TO CONTAIN A



1 DELIBERATE MISSTATEMENT, MISREPRESENTATION, OR OMISSION.

2 (2) A CRIME OF RESIDENTIAL MORTGAGE FRAUD UNDER THIS SECTION  
3 SHALL NOT BE PREDICATED SOLELY UPON INFORMATION LAWFULLY DISCLOSED  
4 UNDER FEDERAL DISCLOSURE LAWS, REGULATIONS, AND INTERPRETATIONS  
5 RELATED TO THE MORTGAGE LENDING PROCESS.

6 (3) FOR THE PURPOSE OF DETERMINING VENUE OF A PROSECUTION  
7 UNDER THIS SECTION, A VIOLATION OF THIS SECTION IS CONSIDERED TO  
8 HAVE BEEN COMMITTED IN ANY OF THE FOLLOWING:

9 (A) IN THE COUNTY IN WHICH THE RESIDENTIAL PROPERTY FOR WHICH  
10 THE MORTGAGE LOAN IS OBTAINED OR SOUGHT IS LOCATED.

11 (B) IN ANY COUNTY IN WHICH ANY ACT WAS PERFORMED IN  
12 FURTHERANCE OF THE VIOLATION.

13 (C) IN ANY COUNTY IN WHICH ANY PERSON ALLEGED TO HAVE VIOLATED  
14 THIS SECTION HAD CONTROL OR POSSESSION OF ANY PROCEEDS OF THE  
15 VIOLATION.

16 (D) IF A LOAN CLOSING OCCURRED, IN THE COUNTY IN WHICH THE  
17 CLOSING OCCURRED.

18 (E) IN ANY COUNTY IN WHICH A DOCUMENT CONTAINING A DELIBERATE  
19 MISSTATEMENT, MISREPRESENTATION, OR OMISSION IS FILED OR RECORDED  
20 WITH THE REGISTER OF DEEDS.

21 (4) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY  
22 PUNISHABLE BY 1 OF THE FOLLOWING:

23 (A) EXCEPT FOR A VIOLATION DESCRIBED IN SUBDIVISION (B),  
24 IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN  
25 \$5,000.00, OR BOTH.

26 (B) IF THE VIOLATION INVOLVES ENGAGING OR PARTICIPATING IN A  
27 PATTERN OF RESIDENTIAL MORTGAGE FRAUD OR A CONSPIRACY OR ENDEAVOR



1 TO ENGAGE OR PARTICIPATE IN A PATTERN OF RESIDENTIAL MORTGAGE  
2 FRAUD, IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR A FINE OF NOT  
3 MORE THAN \$100,000.00, OR BOTH.

4 (5) EACH RESIDENTIAL PROPERTY TRANSACTION SUBJECT TO A  
5 VIOLATION OF THIS SECTION CONSTITUTES A SEPARATE OFFENSE.

6 (6) ANY REAL OR PERSONAL PROPERTY OF ANY KIND USED OR INTENDED  
7 FOR USE IN THE COURSE OF, DERIVED FROM, OR REALIZED THROUGH A  
8 VIOLATION OF THIS SECTION IS SUBJECT TO FORFEITURE IN THE SAME  
9 MANNER AS PROVIDED IN PART 47 OF THE REVISED JUDICATURE ACT OF  
10 1961, 1961 PA 236, MCL 600.4701 TO 600.4709.

11 (7) AS USED IN THIS SECTION:

12 (A) "MORTGAGE LENDING PROCESS" MEANS THE PROCESS THROUGH WHICH  
13 A PERSON SEEKS OR OBTAINS A RESIDENTIAL MORTGAGE LOAN, INCLUDING,  
14 BUT NOT LIMITED TO, SOLICITATION, APPLICATION, OR ORIGINATION,  
15 NEGOTIATION OF TERMS, THIRD-PARTY PROVIDER SERVICES, UNDERWRITING,  
16 SIGNING AND CLOSING, AND FUNDING OF THE LOAN. DOCUMENTS INVOLVED IN  
17 THE MORTGAGE LENDING PROCESS INCLUDE, BUT ARE NOT LIMITED TO,  
18 UNIFORM RESIDENTIAL LOAN APPLICATIONS OR OTHER LOAN  
19 APPLICATIONS; APPRAISAL REPORTS; HUD-1 SETTLEMENT STATEMENTS;  
20 SUPPORTING PERSONAL DOCUMENTATION FOR LOAN APPLICATIONS SUCH AS W-2  
21 FORMS, VERIFICATIONS OF INCOME AND EMPLOYMENT, BANK STATEMENTS, TAX  
22 RETURNS, AND PAYROLL STUBS; AND ANY REQUIRED DISCLOSURES.

23 (B) "PATTERN OF RESIDENTIAL MORTGAGE FRAUD" MEANS 1 OR MORE  
24 MISSTATEMENTS, MISREPRESENTATIONS, OR OMISSIONS MADE DURING THE  
25 MORTGAGE LENDING PROCESS THAT INVOLVE 2 OR MORE RESIDENTIAL  
26 PROPERTIES AND THAT HAVE THE SAME OR SIMILAR INTENTS, RESULTS,  
27 ACCOMPLICES, VICTIMS, OR METHODS OF COMMISSION OR OTHERWISE ARE



1 INTERRELATED BY DISTINGUISHING CHARACTERISTICS.

2 (C) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED  
3 LIABILITY COMPANY, PARTNERSHIP, TRUSTEE, ASSOCIATION, OR OTHER  
4 LEGAL ENTITY.

5 (D) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN OR AGREEMENT TO  
6 EXTEND CREDIT MADE TO A PERSON THAT IS SECURED BY A MORTGAGE,  
7 SECURITY INTEREST, DEED OF TRUST, OR OTHER DOCUMENT REPRESENTING A  
8 SECURITY INTEREST OR LIEN ON ANY INTEREST IN A 1-FAMILY TO 4-FAMILY  
9 DWELLING LOCATED IN THIS STATE. THE TERM INCLUDES A RENEWAL,  
10 EXTENSION, OR REFINANCING OF A RESIDENTIAL MORTGAGE LOAN.

