

**SUBSTITUTE FOR
HOUSE BILL NO. 5084**

A bill to amend 2009 PA 75, entitled
"Mortgage loan originator licensing act,"
by amending sections 3 and 5 (MCL 493.133 and 493.135), section 3
as amended by 2012 PA 150 and section 5 as amended by 2014 PA 421,
and by adding sections 5a, 5b, and 5c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

2 (a) "Commissioner" means the ~~commissioner of the office of~~
3 ~~financial and insurance regulation in the department of licensing~~
4 ~~and regulatory affairs.~~**director.**

5 (b) "Department" means the department of insurance and
6 **financial services.**

7 (c) ~~(b)~~—"Depository institution" means that term as defined in



1 section 3 of the federal deposit insurance act, 12 USC 1813, or a
2 credit union.

3 (d) "Director" means the director of the department or his or
4 her designee.

5 (e) ~~(e)~~ "Dwelling" means that term as defined in section
6 ~~103(v)~~ 103 of the truth in lending act, 15 USC 1602.

7 (f) ~~(d)~~ "Employee" means an individual who meets both of the
8 following:

9 (i) Has an employment relationship acknowledged by that
10 individual and the person that engages that individual to originate
11 mortgage loans.

12 (ii) Is treated as an employee by the person that engages that
13 individual to originate mortgage loans for compliance with federal
14 income tax laws.

15 (g) ~~(e)~~ "Exempt company" means a person that meets all of the
16 following:

17 (i) Is not required to obtain a license or registration, or is
18 exempt from licensing or registration, under the mortgage brokers,
19 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to
20 445.1684, ~~+~~ the secondary mortgage loan act, 1981 PA 125, MCL
21 493.51 to 493.81, ~~+~~ or the consumer financial services act, 1988 PA
22 161, MCL 487.2051 to 487.2072.

23 (ii) Has a unique identifier in the nationwide mortgage
24 licensing system and registry.

25 (iii) Has been approved by the ~~commissioner~~ **director** in the
26 nationwide mortgage licensing system and registry as an exempt
27 company.

28 (h) ~~(f)~~ "Federal banking agencies" means the ~~board of~~
29 ~~governors of the federal reserve system, the comptroller of the~~



1 ~~currency, the director of the office of thrift supervision, the~~
 2 ~~national credit union administration, and the federal deposit~~
 3 ~~insurance corporation.~~ **Board of Governors of the Federal Reserve**
 4 **System, the Comptroller of the Currency, the director of the Office**
 5 **of Thrift Supervision, the National Credit Union Administration,**
 6 **and the Federal Deposit Insurance Corporation.**

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

10 (j) ~~(h)~~ "Immediate family member" means a spouse, child,
 11 sibling, parent, grandparent, or grandchild. The term includes
 12 stepparents, stepchildren, stepsiblings, and adoptive
 13 relationships.

14 (k) ~~(i)~~ "Individual" means a natural person.

15 (l) ~~(j)~~ "Licensed mortgage loan originator" means a mortgage
 16 loan originator who holds a valid license issued by the
 17 ~~commissioner~~ **director** under this act.

18 (m) ~~(k)~~ "Loan processor or underwriter" means an individual
 19 who performs clerical or support duties as an employee at the
 20 direction of and subject to the supervision and instruction of a
 21 person licensed or designated as exempt from licensing under the
 22 mortgage brokers, lenders, and servicers licensing act, 1987 PA
 23 173, MCL 445.1651 to 445.1684, ~~+~~ the secondary mortgage loan act,
 24 1981 PA 125, MCL 493.51 to 493.81, ~~+~~ or the consumer financial
 25 services act, 1988 PA 161, MCL 487.2051 to 487.2072. For purposes
 26 of this subdivision, "clerical or support duties" may include any
 27 of the following after an application is received:

28 (i) The receipt, collection, distribution, and analysis of
 29 information common for the processing or underwriting of a



1 residential mortgage loan.

2 (ii) Communicating with a consumer to obtain the information
3 necessary for the processing or underwriting of a loan, to the
4 extent that the communication does not include offering or
5 negotiating loan rates or terms, or counseling consumers about
6 residential mortgage loan rates or terms.

7 (n) ~~(l)~~ "Mortgage loan originator" means an individual who
8 originates residential mortgage loans and meets all of the
9 following:

10 (i) Is not an individual engaged solely as a loan processor or
11 underwriter except as otherwise provided in section 5(3).

12 (ii) Is not a person ~~who~~ **that** only performs real estate
13 brokerage activities and is licensed or registered under the laws
14 of this state, unless the person is compensated by a lender, a
15 mortgage broker, or other mortgage loan originator or by any agent
16 of a lender, mortgage broker, or other mortgage loan originator.

17 (iii) Is not a person solely involved in extensions of credit
18 relating to timeshare plans, as that term is defined in 11 USC
19 101(53D).

20 ~~(m) "Originate" means do any of the following for compensation~~
21 ~~or gain, or in the expectation of compensation or gain, in~~
22 ~~connection with a residential mortgage loan:~~

23 ~~(i) Take a residential mortgage loan application.~~

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

25 (o) ~~(n)~~ "Mortgage servicer" means a person ~~who~~ **that** directly
26 or indirectly services or offers to service residential mortgage
27 loans.

28 (p) ~~(e)~~ "Nationwide mortgage licensing system and registry"
29 means a mortgage licensing system developed and maintained by the



1 conference of state bank supervisors and the American association
 2 of residential mortgage regulators for the licensing and
 3 registration of licensed mortgage loan originators.

4 **(q)** ~~(p)~~—"Nontraditional mortgage product" means any mortgage
 5 product other than a 30-year fixed rate mortgage.

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

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

11 **(i)** Take a residential mortgage loan application.

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

13 **(t)** ~~(q)~~—"Person" means an individual, corporation, limited
 14 liability company, partnership, association, or other legal entity.

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

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

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

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

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

29 **(v)** Offering to engage in any activity, or act in any



1 capacity, described in subparagraph (i), (ii), (iii), or (iv).

2 (v) ~~(s)~~—"Registered mortgage loan originator" means an
3 individual who meets all of the following:

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

6 (A) A depository institution.

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

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

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

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

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

22 (y) ~~(v)~~—"SAFE act" means the secure and fair enforcement for
23 mortgage licensing act of 2008, ~~Public Law 110-289~~, 12 USC 5101 to
24 ~~5116~~.5117.

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



1 **(aa)** ~~(x)~~—"Sponsor" means a person that meets all of the
2 following:

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

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

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

16 **(bb)** ~~(y)~~—"Unique identifier" means a number or other
17 identifier assigned by protocols established by the nationwide
18 mortgage licensing system and registry.

19 Sec. 5. (1) Unless specifically exempted under subsection (2),
20 beginning July 31, 2010, **and except as provided in sections 5a and**
21 **5b**, an individual shall not engage in the business of a mortgage
22 loan originator with respect to any dwelling located in this state
23 without first obtaining and maintaining annually a license under
24 this act. Each licensed mortgage loan originator ~~must~~**shall**
25 register with and maintain a valid unique identifier issued by the
26 nationwide mortgage licensing system and registry.

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

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



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

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

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

13 (e) An individual who acts as a mortgage servicer, or who is
14 an employee of a mortgage servicer, who offers or negotiates the
15 terms of residential mortgage loans for the purpose of
16 renegotiating, modifying, replacing, or subordinating the principal
17 of existing residential mortgage loans of which the borrowers are
18 behind in making their payments, are in default, or have a
19 reasonable likelihood of falling behind in making payments or
20 defaulting. ~~However, the~~ **The** exemption ~~from this act~~ **provided** under
21 this subdivision does not apply to an individual who acts as a
22 mortgage servicer, or is an employee of a mortgage servicer, who
23 offers or negotiates the terms of a residential mortgage loan
24 transaction that constitutes a refinancing under 12 CFR 1026.20(a)
25 or that obligates a different consumer to pay the existing
26 residential mortgage loan.

27 (3) A loan processor or underwriter who is an independent
28 contractor may not engage in the activities of a loan processor or
29 underwriter unless that independent contractor loan processor or



1 underwriter obtains and maintains a license under subsection (1).
2 Each independent contractor loan processor or underwriter licensed
3 as a mortgage loan originator ~~must~~**shall** have and maintain a valid
4 unique identifier issued by the nationwide mortgage licensing
5 system and registry.

6 (4) The ~~commissioner~~**director** may establish licensing rules
7 and interim procedures for licensing and acceptance of
8 applications. For previously registered or licensed individuals,
9 the ~~commissioner~~**director** may establish expedited review and
10 licensing procedures.

11 **Sec. 5a. (1) An individual who is a registered mortgage loan**
12 **originator, upon becoming employed by an entity that is not an**
13 **entity described in section 3(v) (i) (A), (B), or (C), shall have**
14 **temporary authority to act as a mortgage loan originator for the**
15 **period described in subsection (2) without first obtaining a**
16 **license under this act if all of the following apply:**

17 (a) The individual is employed by an entity that is a licensee
18 or registrant under the mortgage brokers, lenders, and servicers
19 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary
20 mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the
21 consumer financial services act, 1988 PA 161, MCL 487.2051 to
22 487.2072.

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

26 (c) The individual has not been subject to, or served with, a
27 cease and desist order in this state or any other state, or under
28 12 USC 5113.

29 (d) The individual has not been convicted of, or pled guilty



1 or no contest to, a misdemeanor or felony that would preclude
2 licensure under this act.

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

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

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

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

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

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

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

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

27 (3) As used in this section, "state" means any state of the
28 United States, the District of Columbia, any territory of the
29 United States, Puerto Rico, Guam, American Samoa, the Trust



1 Territory of the Pacific Islands, the Virgin Islands, and the
2 Northern Mariana Islands.

3 Sec. 5b. (1) An individual who is a mortgage loan originator
4 licensed in another state shall have temporary authority to act as
5 a mortgage loan originator in this state for the period described
6 in subsection (2) without first obtaining a license under this act
7 if all of the following apply:

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

10 (b) The individual is employed by an entity that is licensed
11 or registered under the mortgage brokers, lenders, and servicers
12 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary
13 mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the
14 consumer financial services act, 1988 PA 161, MCL 487.2051 to
15 487.2072.

16 (c) The individual was licensed in another state during the
17 30-day period immediately preceding the date on which the
18 information required under section 7 is submitted.

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

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

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

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



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

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

10 Sec. 5c. With respect to the temporary authority authorized
11 under sections 5a and 5b, both of the following apply:

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

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

