

SUBSTITUTE FOR
SENATE BILL NO. 908

A bill to amend 2009 PA 75, entitled
"Mortgage loan originator licensing act,"
by amending sections 3, 5, 9, 15, and 29 (MCL 493.133, 493.135,
493.139, 493.145, and 493.159), sections 3 and 29 as amended by
2010 PA 356.

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 ~~energy,~~
4 ~~labor, and economic growth.~~ **LICENSING AND REGULATORY AFFAIRS.**

5 (b) "Depository institution" means that term as defined in
6 section 3 of the federal deposit insurance act, 12 USC 1813, or a
7 credit union.

8 (c) "Dwelling" means that term as defined in section 103(v) of

1 the truth in lending act, 15 USC 1602.

2 (d) "Employee" means an individual who meets both of the
3 following:

4 (i) Has an employment relationship acknowledged by that
5 individual and the person that engages that individual to originate
6 mortgage loans.

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

10 (E) "EXEMPT COMPANY" MEANS A PERSON THAT MEETS ALL OF THE
11 FOLLOWING:

12 (i) IS NOT REQUIRED TO OBTAIN A LICENSE OR REGISTRATION, OR IS
13 EXEMPT FROM LICENSING OR REGISTRATION, UNDER THE MORTGAGE BROKERS,
14 LENDERS, AND SERVICERS LICENSING ACT, 1987 PA 173, MCL 445.1651 TO
15 445.1684; THE SECONDARY MORTGAGE LOAN ACT, 1981 PA 125, MCL 493.51
16 TO 493.81; OR THE CONSUMER FINANCIAL SERVICES ACT, 1988 PA 161, MCL
17 487.2051 TO 487.2072.

18 (ii) HAS A UNIQUE IDENTIFIER IN THE NATIONWIDE MORTGAGE
19 LICENSING SYSTEM AND REGISTRY.

20 (iii) HAS BEEN APPROVED BY THE COMMISSIONER IN THE NATIONWIDE
21 MORTGAGE LICENSING SYSTEM AND REGISTRY AS AN EXEMPT COMPANY.

22 (F) ~~(e)~~—"Federal banking agencies" means the board of
23 governors of the federal reserve system, the comptroller of the
24 currency, the director of the office of thrift supervision, the
25 national credit union administration, and the federal deposit
26 insurance corporation.

27 (G) ~~(f)~~—"Financial licensing acts" means that term as defined

1 in section 2 of the consumer financial services act, 1988 PA 161,
2 MCL 487.2052.

3 (H) ~~(g)~~—"Immediate family member" means a spouse, child,
4 sibling, parent, grandparent, or grandchild. The term includes
5 stepparents, stepchildren, stepsiblings, and adoptive
6 relationships.

7 (I) ~~(h)~~—"Individual" means a natural person.

8 (J) ~~(i)~~—"Licensed mortgage loan originator" means a mortgage
9 loan originator who holds a valid license issued by the
10 commissioner under this act.

11 ~~—— (j) "Loan modification activities" means any of the following:~~

12 ~~—— (i) Collecting or receiving payments, including payments of~~
13 ~~principal, interest, escrow amounts, and other amounts due, on~~
14 ~~existing residential mortgage loans due and owing to a mortgagor or~~
15 ~~mortgage servicer, when the borrower is in default or in reasonably~~
16 ~~foreseeable likelihood of default.~~

17 ~~—— (ii) Working with a borrower described in subparagraph (i) to~~
18 ~~collect data concerning the borrower's residential mortgage loan or~~
19 ~~loans.~~

20 ~~—— (iii) Making any decisions necessary to modify, either~~
21 ~~temporarily or permanently, certain terms of the residential~~
22 ~~mortgage loan or loans of a borrower described in subparagraph (i)~~
23 ~~or to otherwise finalize collection through the foreclosure~~
24 ~~process. These decisions may include changing the principal amount,~~
25 ~~the rate of annual interest charged, or the term of a residential~~
26 ~~mortgage loan; waiving any fees or charges, including late charges,~~
27 ~~a borrower is obligated to pay; deferring residential mortgage loan~~

~~1 payments, or making similar adjustments to a borrower's residential~~
~~2 mortgage loan or the borrower's obligations under the loan.~~

3 (k) "Loan processor or underwriter" means an individual who
4 performs clerical or support duties as an employee at the direction
5 of and subject to the supervision and instruction of a person
6 licensed or designated as exempt from licensing under the mortgage
7 brokers, lenders, and servicers licensing act, 1987 PA 173, MCL
8 445.1651 to 445.1684; the secondary mortgage loan act, 1981 PA 125,
9 MCL 493.51 to 493.81; or the consumer financial services act, 1988
10 PA 161, MCL 487.2051 to 487.2072. For purposes of this subdivision,
11 "clerical or support duties" may include any of the following after
12 an application is received:

13 (i) The receipt, collection, distribution, and analysis of
14 information common for the processing or underwriting of a
15 residential mortgage loan.

16 (ii) Communicating with a consumer to obtain the information
17 necessary for the processing or underwriting of a loan, to the
18 extent that the communication does not include offering or
19 negotiating loan rates or terms, or counseling consumers about
20 residential mortgage loan rates or terms.

21 (l) "Mortgage loan originator" means an individual who
22 originates residential mortgage loans and meets all of the
23 following:

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

26 (ii) Is not a person who only performs real estate brokerage
27 activities and is licensed or registered under the laws of this

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

4 (iii) Is not a person solely involved in extensions of credit
5 relating to timeshare plans, as that term is defined in 11 USC
6 101(53D).

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

10 (i) Take a residential mortgage loan application.

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

12 (n) "Mortgage servicer" means a person who directly or
13 indirectly services or offers to service residential mortgage
14 loans.

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

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

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

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

27 (i) Acting as a real estate agent or real estate broker for a

1 buyer, seller, lessor, or lessee of real property.

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

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

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

11 (v) Offering to engage in any activity, or act in any
12 capacity, described in ~~subparagraphs~~ **SUBPARAGRAPH** (i), (ii), (iii), or
13 (iv).

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

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

18 (A) A depository institution.

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

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

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

26 (t) "Residential mortgage loan" means any loan primarily for
27 personal, family, or household use that is secured by a mortgage,

1 deed of trust, or other equivalent consensual security interest on
2 a dwelling or residential real estate on which a person has
3 constructed or intends to construct a dwelling.

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

7 (v) "SAFE act" means the secure and fair enforcement for
8 mortgage licensing act of 2008, ~~title V of the housing and economic~~
9 ~~recovery act of 2008~~, Public Law 110-289, 12 USC 5101 to 5116.

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

15 (X) "SPONSOR" MEANS A PERSON THAT MEETS ALL OF THE FOLLOWING:

16 (i) HAS A UNIQUE IDENTIFIER IN THE NATIONWIDE MORTGAGE
17 LICENSING SYSTEM AND REGISTRY.

18 (ii) IS APPROVED BY THE COMMISSIONER IN THE NATIONWIDE MORTGAGE
19 LICENSING SYSTEM AND REGISTRY AS AN EXEMPT COMPANY OR AS A PERSON
20 LICENSED OR REGISTERED UNDER THE MORTGAGE BROKERS, LENDERS, AND
21 SERVICERS LICENSING ACT, 1987 PA 173, MCL 445.1651 TO 445.1684, THE
22 SECONDARY MORTGAGE LOAN ACT, 1981 PA 125, MCL 493.51 TO 493.81, OR
23 THE CONSUMER FINANCIAL SERVICES ACT, 1988 PA 161, MCL 487.2051 TO
24 487.2072.

25 (iii) HAS INDICATED IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM
26 AND REGISTRY THAT AN INDIVIDUAL WILL ACT AS A MORTGAGE LOAN
27 ORIGINATOR FOR THAT PERSON UNDER THAT PERSON'S SPECIFIC LICENSE,

1 **REGISTRATION, OR STATUS AS AN EXEMPT COMPANY.**

2 (Y) ~~(x)~~ "Unique identifier" means a number or other identifier
3 assigned by protocols established by the nationwide mortgage
4 licensing system and registry.

5 Sec. 5. (1) ~~Subject to subsection (5), unless~~ **UNLESS**
6 specifically exempted under subsection (2), beginning July 31,
7 2010, an individual shall not engage in the business of a mortgage
8 loan originator with respect to any dwelling located in this state
9 without first obtaining and maintaining annually a license under
10 this act. Each licensed mortgage loan originator must register with
11 and maintain a valid unique identifier issued by the nationwide
12 mortgage licensing system and registry.

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

14 (a) A registered mortgage loan originator, when acting for an
15 entity described **IN** section ~~3(x)(i)(A)~~, **3(S)(i)(A)**, (B), or (C).

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

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

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

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

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

13 ~~—— (5) An individual engaged in the business of a mortgage loan~~
14 ~~originator is not required to obtain and maintain a license under~~
15 ~~this act until July 31, 2011 if that individual is employed~~
16 ~~exclusively by a mortgage servicer; if that individual is~~
17 ~~authorized to perform loan modification activities concerning~~
18 ~~existing residential mortgage loans, and not to originate new~~
19 ~~residential mortgage loans or perform any other activities of a~~
20 ~~mortgage loan originator, on behalf of that mortgage servicer; and~~
21 ~~if this extension of time is not inconsistent with any guideline,~~
22 ~~rule, regulation, or interpretative letter of the United States~~
23 ~~department of housing and urban development concerning the~~
24 ~~interpretation of the SAFE act and its applicability to loan~~
25 ~~modification activities.~~

26 Sec. 9. (1) The commissioner shall not issue a mortgage loan
27 originator license unless the commissioner makes at a minimum the

1 following findings:

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

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

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

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

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

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

24 (e) The applicant has completed the prelicensing education
25 requirement described in section 11.

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

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

3 (H) THE APPLICANT HAS A SPONSOR IN THE NATIONWIDE MORTGAGE
4 LICENSING SYSTEM AND REGISTRY THAT IS APPROVED BY THE COMMISSIONER.

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

8 Sec. 15. (1) The commissioner shall annually renew the license
9 of a licensed mortgage loan originator if all of the following are
10 met before his or her current license expires:

11 (a) ~~The~~ EXCEPT FOR SECTION 9(1)(H), THE mortgage loan
12 originator continues to meet the minimum standards for license
13 issuance under section 9.

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

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

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

24 Sec. 29. (1) ~~Each~~ SUBJECT TO SUBSECTION (2), EACH mortgage
25 loan originator must provide to the commissioner or be covered by a
26 surety bond that meets the requirements of subsection ~~(4)~~ (5). A
27 surety bond provided under this subsection shall provide coverage

1 for the mortgage loan originator in 1 of the following amounts:

2 (a) If the mortgage loan originator did not originate any
3 mortgage loans in the preceding calendar year, or the sum of the
4 principal amounts of mortgage loans originated by the mortgage loan
5 originator in the preceding calendar year is less than
6 \$12,000,000.00, as determined by the commissioner, \$10,000.00.

7 (b) If the sum of the principal amounts of mortgage loans
8 originated by the mortgage loan originator in the preceding
9 calendar year is \$12,000,000.00 or more and less than
10 \$24,000,000.00, as determined by the commissioner, \$25,000.00.

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

15 (2) If ~~the~~**A** mortgage loan originator is an employee or
16 exclusive agent of a ~~person subject to this act~~**SPONSOR** and that
17 ~~person has provided~~**SPONSOR PROVIDES** the commissioner with a surety
18 bond that satisfies the requirements of subsection ~~(4),~~**(5)**, the
19 commissioner may accept that surety bond in lieu of the mortgage
20 loan originator's surety bond obligation under subsection (1). The
21 principal amount of a surety bond provided under this subsection
22 shall provide coverage for all of the ~~person's~~**SPONSOR'S** mortgage
23 loan originators in 1 of the following amounts:

24 (a) If the sum of the principal amounts of mortgage loans
25 closed or modified by the ~~person~~**SPONSOR** in the preceding calendar
26 year is less than \$12,000,000.00, as determined by the
27 commissioner, \$50,000.00.

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

5 (c) If the sum of the principal amounts of mortgage loans
6 closed or modified by the ~~person~~-SPONSOR in the preceding calendar
7 year is \$24,000,000.00 or more, as determined by the commissioner,
8 \$250,000.00.

9 (3) THE LICENSE OF A MORTGAGE LOAN ORIGINATOR WHO FAILS TO
10 MEET THE REQUIREMENTS OF SECTION 9(1)(G) OR (H) IS AUTOMATICALLY
11 SUBJECT TO A CONDITION THAT HE OR SHE MAY NOT ORIGINATE MORTGAGE
12 LOANS UNDER THIS ACT, AND THAT MORTGAGE ORIGINATOR SHALL
13 IMMEDIATELY CEASE ORIGINATING MORTGAGE LOANS.

14 (4) ~~(3)~~—Before the end of a calendar quarter, a ~~person~~-SPONSOR
15 that provides a surety bond under subsection (2) for its employees
16 and exclusive agents shall submit a report to the commissioner that
17 contains all of the following information about the surety bond in
18 effect for the next calendar quarter:

19 (a) The name and unique identifier of the ~~person~~-SPONSOR.

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

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

24 (5) ~~(4)~~—All of the following apply to a surety bond provided
25 under subsection (1) or (2):

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

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

5 (c) If an action is commenced on a bond described in this
6 section, the commissioner may require the filing of a new bond. If
7 there is a recovery in that action, the mortgage loan originator or
8 ~~person~~ **SPONSOR** described in subsection (2) shall immediately
9 provide to the commissioner a new surety bond that meets the
10 requirements of this section.