

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5287

A bill to amend 1987 PA 173, entitled
"Mortgage brokers, lenders, and servicers licensing act,"
by amending section 2 (MCL 445.1652), as amended by 2007 PA 179.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) A person shall not act as a mortgage broker,
2 mortgage lender, or mortgage servicer without first obtaining a
3 license or registering under this act, unless 1 or more of the
4 following apply:

5 (a) The person is solely performing services as an employee of
6 only 1 mortgage broker, mortgage lender, or mortgage servicer. **THIS**
7 **SUBDIVISION DOES NOT APPLY AFTER DECEMBER 31, 2008.**

8 (b) The person is exempted from the act under section 25.

9 (c) The person is licensed as a class I licensee under the

1 consumer financial services act, 1988 PA 161, MCL 487.2051 to
2 487.2072.

3 (d) The individual is an employee of a professional employer
4 organization, as that term is defined in section 113 of the
5 Michigan business tax act, 2007 PA 36, MCL 208.1113, solely acting
6 as a residential mortgage originator of only 1 mortgage broker or
7 mortgage lender. The mortgage broker or mortgage lender shall do
8 all of the following:

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

11 (ii) Be responsible for all activities of the individual and
12 assume responsibility for the individual's actions that are covered
13 by the proof of financial responsibility deposit required under
14 section 4.

15 (2) A person that is licensed to make regulatory loans under
16 the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, or is
17 licensed to make secondary mortgage loans under the secondary
18 mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and is
19 registered with the commissioner shall file with the commissioner
20 an application for a license under section 3(1) or shall
21 discontinue all activities that are subject to this act.

22 (3) Unless a residential mortgage originator is otherwise
23 licensed or registered under this act, a residential mortgage
24 originator shall not receive directly or indirectly any
25 compensation, commission, fee, points, or other remuneration or
26 benefits from a mortgage broker, mortgage lender, or mortgage
27 servicer other than the employer of the residential mortgage

1 originator. THIS SUBSECTION DOES NOT APPLY AFTER DECEMBER 31, 2008.

2 (4) BEGINNING JANUARY 1, 2009, A LOAN OFFICER SHALL NOT
3 DIRECTLY OR INDIRECTLY RECEIVE ANY COMPENSATION, COMMISSION, FEE,
4 POINTS, OR OTHER REMUNERATION OR BENEFITS FOR ORIGINATING A
5 MORTGAGE LOAN UNLESS BOTH OF THE FOLLOWING ARE MET:

6 (A) THE LOAN OFFICER IS A LOAN OFFICER REGISTRANT.

7 (B) THE COMPENSATION, COMMISSION, FEE, POINTS, OR OTHER
8 REMUNERATION OR BENEFITS ARE PAID BY THE LICENSEE OR REGISTRANT FOR
9 WHICH THE LOAN OFFICER ORIGINATED THAT MORTGAGE LOAN.

10 (5) ~~(4)~~—Unless a residential mortgage originator is otherwise
11 licensed or registered under this act, a mortgage broker, mortgage
12 lender, or mortgage servicer shall not pay directly or indirectly
13 any compensation, commission, fee, points, or other remuneration or
14 benefits to a residential mortgage originator other than an
15 employee of the mortgage broker, mortgage lender, or mortgage
16 servicer. As used in this subsection and subsection (3),
17 "residential mortgage originator" means a person who assists
18 another person in obtaining a mortgage loan. **THIS SUBSECTION DOES**
19 **NOT APPLY AFTER DECEMBER 31, 2008.**

20 (6) BEGINNING JANUARY 1, 2009, A MORTGAGE BROKER, MORTGAGE
21 LENDER, OR MORTGAGE SERVICER SHALL NOT DIRECTLY OR INDIRECTLY PAY
22 ANY COMPENSATION, COMMISSION, FEE, POINTS, OR OTHER REMUNERATION OR
23 BENEFITS TO ANY OF THE FOLLOWING:

24 (A) A LOAN OFFICER WHO IS NOT A LOAN OFFICER REGISTRANT.

25 (B) A LOAN OFFICER REGISTRANT WHO IS NOT AN EMPLOYEE OR AGENT
26 OF THAT MORTGAGE BROKER, MORTGAGE LENDER, OR MORTGAGE SERVICER.

27 (7) ~~(5)~~—A mortgage broker, mortgage lender, or mortgage

1 servicer that ~~was~~**IS** exempt from regulation under this act and is a
2 subsidiary or affiliate of a depository financial institution or a
3 depository financial institution holding company that does not
4 maintain a main office or branch office in this state, shall
5 register under section 6 or shall discontinue all activities
6 subject to this act.

7 (8) ~~(6)~~ Except for a state or nationally chartered bank,
8 savings bank, or an affiliate of a bank or savings bank, the person
9 subject to this act shall not include in its name or assumed name,
10 the words "bank", "banker", "banking", "banc", "bankcorp",
11 "bancorp", or any other words or phrases that would imply that the
12 person is a bank, is engaged in the business of banking, or is
13 affiliated with a bank or savings bank. It is not a violation of
14 this subsection for a licensee or registrant to use the term
15 "mortgage banker" or "mortgage banking" in its name or assumed
16 name. A person subject to this act whose name or assumed name on
17 January 1, 1995 contained a word prohibited by this section may
18 continue to use the name or assumed name.

19 (9) **AS USED IN THIS SECTION, "EMPLOYEE" MEANS THAT TERM AS**
20 **DEFINED IN SECTION 3401 OF THE INTERNAL REVENUE CODE, 26 USC 3401.**

21 Enacting section 1. This amendatory act does not take effect
22 unless all of the following bills of the 94th Legislature are
23 enacted into law:

24 (a) Senate Bill No. 826.

25 (b) Senate Bill No. 827.

26 (c) Senate Bill No. 828.

27 (d) Senate Bill No. 829.

- 1 (e) Senate Bill No. 830.
- 2 (f) Senate Bill No. 831.
- 3 (g) Senate Bill No. 832.
- 4 (h) Senate Bill No. 833.
- 5 (i) House Bill No. 5288.
- 6 (j) House Bill No. 5289.
- 7 (k) House Bill No. 5290.
- 8 (l) House Bill No. 5291.