

HOUSE BILL No. 5287

October 11, 2007, Introduced by Reps. Jackson, Young, Kathleen Law, Hopgood, Brown, Valentine, Hammel, Tobocman, Robert Jones, Vagnozzi, Mayes, Gonzales, Donigan and Dean and referred to the Committee on Banking and Financial Services.

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 2005 PA 113.

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.~~

7 (A) ~~(b)~~ The person is exempted from the act under section 25.

8 (B) ~~(c)~~ The person is licensed as a class I licensee under the
9 consumer financial services act, 1988 PA 161, MCL 487.2051 to

1 487.2072.

2 (C) ~~(d)~~ The individual is an employee of a professional
 3 employer organization, as that term is defined in section 4-113 of
 4 the ~~single~~ **MICHIGAN** business tax act, ~~1975 PA 228, MCL 208.4-2007~~
 5 **PA 36, MCL 208.1113**, solely acting as a residential mortgage
 6 originator of only 1 mortgage broker or mortgage lender. The
 7 mortgage broker or mortgage lender shall do all of the following:

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

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

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

21 (3) ~~Unless a residential mortgage originator is otherwise~~
 22 ~~licensed or registered under this act, a residential mortgage~~
 23 ~~originator~~ **A LOAN OFFICER** shall not receive directly or indirectly
 24 any compensation, commission, fee, points, or other remuneration or
 25 benefits ~~from a mortgage broker, mortgage lender, or mortgage~~
 26 ~~servicer other than the employer of the residential mortgage~~
 27 ~~originator.~~ **FOR ORIGINATING A MORTGAGE LOAN UNLESS BOTH OF THE**

1 FOLLOWING ARE MET:

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

3 (B) THE COMPENSATION, COMMISSION, FEE, POINTS, OR OTHER
4 REMUNERATION OR BENEFITS ARE PAID BY THE EMPLOYER OF THE LOAN
5 OFFICER AND THE EMPLOYER IS A LICENSEE OR REGISTRANT.

6 (4) ~~Unless a residential mortgage originator is otherwise~~
7 ~~licensed or registered under this act, a~~ A mortgage broker,
8 mortgage lender, or mortgage servicer shall not pay directly or
9 indirectly any compensation, commission, fee, points, or other
10 remuneration or benefits to ~~a residential mortgage originator other~~
11 ~~than an employee of the~~ ANY OF THE FOLLOWING:

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

13 (B) A LOAN OFFICER REGISTRANT WHO IS NOT AN EMPLOYEE OF THAT
14 mortgage broker, mortgage lender, or mortgage servicer. ~~As used in~~
15 ~~this subsection and subsection (3), "residential mortgage~~
16 ~~originator" means a person who assists another person in obtaining~~
17 ~~a mortgage loan.~~

18 (5) A mortgage broker, mortgage lender, or mortgage servicer
19 that ~~was~~ IS exempt from regulation under this act and is a
20 subsidiary or affiliate of a depository financial institution or a
21 depository financial institution holding company that does not
22 maintain a main office or branch office in this state, shall
23 register under section 6 or shall discontinue all activities
24 subject to this act.

25 (6) Except for a state or nationally chartered bank, savings
26 bank, or an affiliate of a bank or savings bank, the person subject
27 to this act shall not include in its name or assumed name, the

words "bank", "banker", "banking", "banc", "bankcorp", "bancorp", or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee or registrant to use the term "mortgage banker" or "mortgage banking" in its name or assumed name. A person subject to this act whose name or assumed name on January 1, 1995 contained a word prohibited by this section may continue to use the name or assumed name.

(7) AS USED IN THIS SECTION, "EMPLOYEE" MEANS THAT TERM AS DEFINED IN SECTION 3401 OF THE INTERNAL REVENUE CODE, 26 USC 3401. THERE IS A REBUTTABLE PRESUMPTION THAT AN INDIVIDUAL FOR WHOM A PERSON REPORTS COMPENSATION FOR FEDERAL INCOME TAX PURPOSES ON FORM W-2 IS AN EMPLOYEE. THERE IS A REBUTTABLE PRESUMPTION THAT AN INDIVIDUAL FOR WHOM A PERSON REPORTS PAYMENTS FOR FEDERAL INCOME TAX PURPOSES ON FORM 1099-MISC IS NOT AN EMPLOYEE.

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

(a) Senate Bill No.____ or House Bill No.____ (request no. 03068'07).

(b) Senate Bill No.____ or House Bill No.____ (request no. 03157'07).

(c) Senate Bill No.____ or House Bill No. 5288 (request no. 05191'07).

(d) Senate Bill No.____ or House Bill No.____ (request no. 05192'07).

1 (e) Senate Bill No.____ or House Bill No. 5289(request no.
2 05193'07).

3 (f) Senate Bill No.____ or House Bill No.____ (request no.
4 05194'07).

5 (g) Senate Bill No.____ or House Bill No.____ (request no.
6 05195'07).

7 (h) Senate Bill No.____ or House Bill No. 5290(request no.
8 05197'07).

9 (i) Senate Bill No.____ or House Bill No. 5291(request no.
10 05198'07).

11 (j) Senate Bill No.____ or House Bill No.____ (request no.
12 05199'07).

13 (k) Senate Bill No.____ or House Bill No.____ (request no.
14 05200'07).