

Act No. 59
Public Acts of 2008
Approved by the Governor
April 2, 2008
Filed with the Secretary of State
April 3, 2008
EFFECTIVE DATE: April 3, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Jackson, Young, Kathleen Law, Hopgood, Brown, Valentine, Hammel, Tobocman, Robert Jones, Vagnozzi, Mayes, Gonzales, Donigan, Dean, Accavitti, Bauer, Bieda, Brandenburg, Clemente, Condino, Constan, Corriveau, Coulouris, Cushingberry, Espinoza, LeBlanc, Leland, Lemmons, Meadows, Meisner, Moore, Nofs, Pastor, Polidori, Rocca, Sak, Scott, Alma Smith, Spade, Stahl, Ward, Warren and Wojno

ENROLLED HOUSE BILL No. 5287

AN ACT to amend 1987 PA 173, entitled "An act to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of the financial institutions bureau and certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties," by amending section 2 (MCL 445.1652), as amended by 2007 PA 179.

The People of the State of Michigan enact:

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

(a) The person is solely performing services as an employee of only 1 mortgage broker, mortgage lender, or mortgage servicer. This subdivision does not apply after December 31, 2008.

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

(c) The person is licensed as a class I licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

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

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

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

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

(3) Unless a residential mortgage originator is otherwise licensed or registered under this act, a residential mortgage originator shall not receive directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits from a mortgage broker, mortgage lender, or mortgage servicer other than the employer of the residential mortgage originator. This subsection does not apply after December 31, 2008.

(4) Beginning January 1, 2009, a loan officer shall not directly or indirectly receive any compensation, commission, fee, points, or other remuneration or benefits for originating a mortgage loan unless both of the following are met:

(a) The loan officer is a loan officer registrant.

(b) The compensation, commission, fee, points, or other remuneration or benefits are paid by the licensee or registrant for which the loan officer originated that mortgage loan.

(5) Unless a residential mortgage originator is otherwise licensed or registered under this act, a mortgage broker, mortgage lender, or mortgage servicer shall not pay directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits to a residential mortgage originator other than an employee of the mortgage broker, mortgage lender, or mortgage servicer. As used in this subsection and subsection (3), "residential mortgage originator" means a person who assists another person in obtaining a mortgage loan. This subsection does not apply after December 31, 2008.

(6) Beginning January 1, 2009, a mortgage broker, mortgage lender, or mortgage servicer shall not directly or indirectly pay any compensation, commission, fee, points, or other remuneration or benefits to any of the following:

(a) A loan officer who is not a loan officer registrant.

(b) A loan officer registrant who is not an employee or agent of that mortgage broker, mortgage lender, or mortgage servicer.

(7) A mortgage broker, mortgage lender, or mortgage servicer that is exempt from regulation under this act and is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company that does not maintain a main office or branch office in this state, shall register under section 6 or shall discontinue all activities subject to this act.

(8) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, the person subject 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.

(9) As used in this section, "employee" means that term as defined in section 3401 of the internal revenue code, 26 USC 3401.

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. 826.

(b) Senate Bill No. 827.

(c) Senate Bill No. 828.

(d) Senate Bill No. 829.

(e) Senate Bill No. 830.

(f) Senate Bill No. 831.

(g) Senate Bill No. 832.

(h) Senate Bill No. 833.

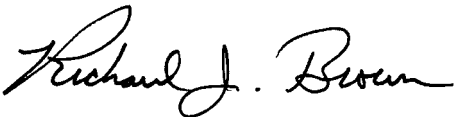
(i) House Bill No. 5288.

(j) House Bill No. 5289.

(k) House Bill No. 5290.

(l) House Bill No. 5291.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor