SUBSTITUTE FOR

SENATE BILL NO. 1525

A bill to amend 2009 PA 75, entitled

"Mortgage loan originator licensing act,"

by amending sections 3 and 29 (MCL 493.133 and 493.159).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3. As used in this act:

(a) "Commissioner" means the commissioner of the office of financial and insurance regulation in the department of energy, labor, and economic growth.

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

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

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

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

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

(e) "Federal banking agencies" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.

(f) "Financial licensing acts" means that term as defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(g) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(h) "Individual" means a natural person.

(i) "Licensed mortgage loan originator" means a mortgage loan originator who holds a valid license issued by the commissioner under this act.

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

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

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

(*iii*) Making any decisions necessary to modify, either temporarily or permanently, certain terms of the residential mortgage loan or loans of a borrower described in subparagraph (*i*) or to otherwise finalize collection through the foreclosure process. These decisions may include changing the principal amount, the rate of annual interest charged, or the term of a residential mortgage loan; waiving any fees or charges, including late charges, a borrower is obligated to pay; deferring residential mortgage loan payments; or making similar adjustments to a borrower's residential mortgage loan or the borrower's obligations under the loan.

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

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

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

(*l*) "Mortgage loan originator" means an individual who **ORIGINATES RESIDENTIAL MORTGAGE LOANS AND** meets all of the following:

~~(*i*) For compensation or gain or in the expectation of compensation or gain, does any of the following:~~

~~(A) Takes a residential mortgage loan application.~~

~~(B) Offers or negotiates terms of a residential mortgage loan.~~

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

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

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

(M) "ORIGINATE" MEANS DO ANY OF THE FOLLOWING FOR COMPENSATION OR GAIN, OR IN THE EXPECTATION OF COMPENSATION OR GAIN, IN CONNECTION WITH A RESIDENTIAL MORTGAGE LOAN:

(*i*) TAKE A RESIDENTIAL MORTGAGE LOAN APPLICATION.

(*ii*) OFFER OR NEGOTIATE TERMS OF A RESIDENTIAL MORTGAGE LOAN.

(N) ~~(m)~~ "Mortgage servicer" means a person who directly or indirectly services or offers to service residential mortgage loans.

(O) ~~(n)~~ "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

(P) ~~(o)~~ "Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

(Q) ~~(p)~~ "Person" means an individual, corporation, limited liability company, partnership, association, or other legal entity.

(R) ~~(q)~~ "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including, but not limited to, any of the following:

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

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

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

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

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

(S) ~~(r)~~ "Registered mortgage loan originator" means an individual who meets all of the following:

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

(A) A depository institution.

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

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

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

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

(U) ~~(t)~~ "Residential real estate" means any real property located in this state on which a person has constructed or intends to construct a dwelling.

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

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

(X) ~~(w)~~ "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 29. (1) Each mortgage loan originator must provide to the commissioner or be covered by a surety bond that meets the requirements of ~~this section~~ **SUBSECTION (4). A SURETY BOND PROVIDED UNDER THIS SUBSECTION SHALL PROVIDE COVERAGE FOR THE MORTGAGE LOAN ORIGINATOR IN 1 OF THE FOLLOWING AMOUNTS:**

(A) IF THE MORTGAGE LOAN ORIGINATOR DID NOT ORIGINATE ANY MORTGAGE LOANS IN THE PRECEDING CALENDAR YEAR, OR THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS ORIGINATED BY THE MORTGAGE LOAN ORIGINATOR IN THE PRECEDING CALENDAR YEAR IS LESS THAN $12,000,000.00, AS DETERMINED BY THE COMMISSIONER, $10,000.00.

(B) IF THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS ORIGINATED BY THE MORTGAGE LOAN ORIGINATOR IN THE PRECEDING CALENDAR YEAR IS $12,000,000.00 OR MORE AND LESS THAN $24,000,000.00, AS DETERMINED BY THE COMMISSIONER, $25,000.00.

(C) IF THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS ORIGINATED BY THE MORTGAGE LOAN ORIGINATOR IN THE PRECEDING CALENDAR YEAR IS $24,000,000.00 OR MORE, AS DETERMINED BY THE COMMISSIONER, $50,000.00.

(2) If the mortgage loan originator is an employee or exclusive agent of a person subject to this act and that person has provided the commissioner with a surety bond that satisfies the

requirements of ~~this section~~ **SUBSECTION (4)**, the commissioner may accept that surety bond in lieu of the mortgage loan originator's surety bond obligation under subsection (1). **THE PRINCIPAL AMOUNT OF A SURETY BOND PROVIDED UNDER THIS SUBSECTION SHALL PROVIDE COVERAGE FOR ALL OF THE PERSON'S MORTGAGE LOAN ORIGINATORS IN 1 OF THE FOLLOWING AMOUNTS:**

(A) IF THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS CLOSED OR MODIFIED BY THE PERSON IN THE PRECEDING CALENDAR YEAR IS LESS THAN $12,000,000.00, AS DETERMINED BY THE COMMISSIONER, $50,000.00.

(B) IF THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS CLOSED OR MODIFIED BY THE PERSON IN THE PRECEDING CALENDAR YEAR IS $12,000,000.00 OR MORE AND LESS THAN $24,000,000.00, AS DETERMINED BY THE COMMISSIONER, $150,000.00.

(C) IF THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS CLOSED OR MODIFIED BY THE PERSON IN THE PRECEDING CALENDAR YEAR IS $24,000,000.00 OR MORE, AS DETERMINED BY THE COMMISSIONER, $250,000.00.

(3) BEFORE THE END OF A CALENDAR QUARTER, A PERSON THAT PROVIDES A SURETY BOND UNDER SUBSECTION (2) FOR ITS EMPLOYEES AND EXCLUSIVE AGENTS SHALL SUBMIT A REPORT TO THE COMMISSIONER THAT CONTAINS ALL OF THE FOLLOWING INFORMATION ABOUT THE SURETY BOND IN EFFECT FOR THE NEXT CALENDAR QUARTER:

(A) THE NAME AND UNIQUE IDENTIFIER OF THE PERSON.

(B) THE NAME OF THE SURETY ISSUING THE BOND.

(C) FOR EACH MORTGAGE LOAN ORIGINATOR COVERED BY THE BOND, HIS OR HER LEGAL NAME, EXACTLY AS FILED WITH THE NATIONWIDE MORTGAGE

LICENSING SYSTEM AND REGISTRY, AND UNIQUE IDENTIFIER.

(4) ~~(3)~~ All of the following apply to a surety bond ~~described in~~ **PROVIDED UNDER** subsection (1) or (2):

~~(a) A surety bond described in subsection (2) must provide coverage for each mortgage loan originator covered by that bond in 1 of the following amounts:~~

~~(*i*) If the mortgage loan originator did not close any mortgage loans in the preceding calendar year, or the sum of the principal amounts of mortgage loans closed by the mortgage loan originator in the preceding calendar year is less than $12,000,000.00, as determined by the commissioner, $10,000.00.~~

~~(*ii*) If the sum of the principal amounts of mortgage loans closed by the mortgage loan originator in the preceding calendar year is $12,000,000.00 or more and less than $24,000,000.00, as determined by the commissioner, $25,000.00.~~

~~(*iii*) If the sum of the principal amounts of mortgage loans closed by the mortgage loan originator in the preceding calendar year is $24,000,000.00 or more, as determined by the commissioner, $50,000.00.~~

(A) ~~(b)~~ The ~~surety~~ bond shall be in a form as prescribed by the commissioner.

(B) ~~(c)~~ The commissioner may promulgate rules with respect to the requirements for surety bonds under this section that **THE COMMISSIONER DETERMINES** are necessary to accomplish the purposes of this act.

(C) ~~(4)~~ If an action is commenced on a bond described in this section, the commissioner may require the filing of a new bond. If there is a recovery in that action, the mortgage loan originator **OR PERSON DESCRIBED IN SUBSECTION (2)** shall immediately provide to the commissioner a new surety bond that meets the requirements of this section.