

SENATE BILL No. 1525

September 28, 2010, Introduced by Senators RICHARDVILLE, HUNTER and WHITMER and referred to the Committee on Banking and Financial Institutions.

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:

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.

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.

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

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

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

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

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

16 (f) "Financial licensing acts" means that term as defined in
17 section 2 of the consumer financial services act, 1988 PA 161, MCL
18 487.2052.

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

22 (h) "Individual" means a natural person.

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

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

27 (i) Collecting or receiving payments, including payments of

1 principal, interest, escrow amounts, and other amounts due, on
2 existing residential mortgage loans due and owing to a mortgagor or
3 mortgage servicer, when the borrower is in default or in reasonably
4 foreseeable likelihood of default.

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

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

18 (k) "Loan processor or underwriter" means an individual who
19 performs clerical or support duties as an employee at the direction
20 of and subject to the supervision and instruction of a person
21 licensed or designated as exempt from licensing under the mortgage
22 brokers, lenders, and servicers licensing act, 1987 PA 173, MCL
23 445.1651 to 445.1684; the secondary mortgage loan act, 1981 PA 125,
24 MCL 493.51 to 493.81; or the consumer financial services act, 1988
25 PA 161, MCL 487.2051 to 487.2072. For purposes of this subdivision,
26 "clerical or support duties" may include any of the following after
27 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

1 CONNECTION WITH A RESIDENTIAL MORTGAGE LOAN:

2 (i) TAKE A RESIDENTIAL MORTGAGE LOAN APPLICATION.

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

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

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

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

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

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

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

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

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

27 (iv) Engaging in any activity for which a person engaged in the

1 activity is required to be registered or licensed as a real estate
2 agent or real estate broker under any applicable law.

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

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

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

9 (A) A depository institution.

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

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

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

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

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

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

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

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

9 Sec. 29. (1) Each mortgage loan originator must provide to the
 10 commissioner or be covered by a surety bond that meets the
 11 requirements of this section.

12 (2) If ~~the~~ **A** mortgage loan originator is an employee or
 13 exclusive agent of a person subject to this act and that person ~~has~~
 14 ~~provided~~ **PROVIDES** the commissioner with a surety bond that
 15 satisfies the requirements of this section, the commissioner may
 16 accept that surety bond in lieu of the mortgage loan originator's
 17 surety bond obligation under subsection (1). ~~(3)~~ All of the
 18 following apply to a surety bond described in **THIS** subsection: ~~(1)~~
 19 ~~or (2):~~

20 (a) ~~A~~ **SUBJECT TO SUBDIVISION (B), THE** surety bond ~~described in~~
 21 ~~subsection (2)~~ must provide coverage for each mortgage loan
 22 originator covered by that bond in 1 of the following amounts:

23 (i) If the mortgage loan originator did not ~~else~~ **ORIGINATE** any
 24 mortgage loans in the preceding calendar year, or the sum of the
 25 principal amounts of mortgage loans ~~closed~~ **ORIGINATED** by the
 26 mortgage loan originator in the preceding calendar year is less
 27 than \$12,000,000.00, as determined by the commissioner, \$10,000.00.

1 (ii) If the sum of the principal amounts of mortgage loans
2 ~~closed~~**ORIGINATED** by the mortgage loan originator in the preceding
3 calendar year is \$12,000,000.00 or more and less than
4 \$24,000,000.00, as determined by the commissioner, \$25,000.00.

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

9 **(B) IF THE PRINCIPAL AMOUNT OF THE SURETY BOND IS LESS THAN**
10 **THE AGGREGATE AMOUNT OF THE INDIVIDUAL SURETY BONDS OF ITS MORTGAGE**
11 **LOAN ORIGINATORS OTHERWISE REQUIRED UNDER SUBDIVISION (A), THE**
12 **PRINCIPAL AMOUNT OF THE BOND IS NOT LESS THAN 1 OF THE FOLLOWING**
13 **AMOUNTS:**

14 (i) IF THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS
15 CLOSED OR MODIFIED BY THE PERSON IN THE PRECEDING CALENDAR YEAR IS
16 LESS THAN \$12,000,000.00, AS DETERMINED BY THE COMMISSIONER,
17 \$50,000.00.

18 (ii) IF THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS
19 CLOSED OR MODIFIED BY THE PERSON IN THE PRECEDING CALENDAR YEAR IS
20 \$12,000,000.00 OR MORE AND LESS THAN \$24,000,000.00, AS DETERMINED
21 BY THE COMMISSIONER, \$150,000.00.

22 (iii) IF THE SUM OF THE PRINCIPAL AMOUNTS OF MORTGAGE LOANS
23 CLOSED OR MODIFIED BY THE PERSON IN THE PRECEDING CALENDAR YEAR IS
24 \$24,000,000.00 OR MORE, AS DETERMINED BY THE COMMISSIONER,
25 \$250,000.00.

26 (3) BEFORE THE END OF A CALENDAR QUARTER, A PERSON THAT
27 PROVIDES A SURETY BOND UNDER SUBSECTION (2) FOR ITS EMPLOYEES AND

1 EXCLUSIVE AGENTS SHALL SUBMIT A REPORT TO THE COMMISSIONER THAT
2 CONTAINS ALL OF THE FOLLOWING INFORMATION ABOUT THE SURETY BOND IN
3 EFFECT FOR THE NEXT CALENDAR QUARTER:

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

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

6 (C) FOR EACH MORTGAGE LOAN ORIGINATOR COVERED BY THE BOND, HIS
7 OR HER LEGAL NAME, EXACTLY AS FILED WITH THE NATIONWIDE MORTGAGE
8 LICENSING SYSTEM AND REGISTRY, AND UNIQUE IDENTIFIER.

9 (4) ~~(b)~~ The ~~A~~ surety bond **PROVIDED UNDER THIS SECTION** shall be
10 in ~~a~~ ~~THE~~ form ~~as~~ prescribed by the commissioner.

11 (5) ~~(e)~~ The commissioner may promulgate rules with respect to
12 the requirements for surety bonds **PROVIDED** under this section that
13 **THE COMMISSIONER DETERMINES** are necessary to accomplish the
14 purposes of this act.

15 (6) ~~(4)~~ If an action is commenced on a **SURETY** bond ~~described~~
16 ~~in~~ **PROVIDED UNDER** this section, the commissioner may require the
17 filing of a new bond. If there is a recovery in that action, the
18 mortgage loan originator shall immediately provide to the
19 commissioner a new surety bond that meets the requirements of this
20 section.