

HOUSE BILL NO. 5146

October 23, 2019, Introduced by Reps. Farrington, Whitsett, Gay-Dagnogo, Yancey, Lasinski, Tyrone Carter, Kennedy, Hood, Garrett, Sneller, Bolden and Jones and referred to the Committee on Financial Services.

A bill to amend 1981 PA 125, entitled
"The secondary mortgage loan act,"
by amending sections 1 and 2 (MCL 493.51 and 493.52), as amended by
2009 PA 77.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. (1) This act shall be known and may be cited as "the
2 secondary mortgage loan act".
3 (2) As used in this act:



(a) "Broker" means a person ~~who,~~ **that**, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person attempting to obtain a secondary mortgage loan.

(ii) Serves or offers to serve as an agent for a person ~~who~~ **that** makes or offers to make a secondary mortgage loan.

(b) "Commissioner" means the ~~commissioner of the office of financial and insurance regulation of the department of energy, labor, and economic growth or his or her authorized representatives.~~ **director.**

(c) "Control person" means a director or executive officer of a licensee or registrant or a person ~~who~~ **that** has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or registrant.

(d) "Department" means the department of insurance and financial services.

(e) ~~(d)~~—"Depository financial institution" means a state or nationally chartered bank, state or federal chartered savings and loan association, savings bank, or credit union, or any other institution whose deposits are insured by an agency of the federal government.

(f) "Director" means the director of the department or his or her designee.

(g) ~~(e)~~—"Employee" means an individual who meets both of the following:

(i) Has an employment relationship acknowledged by that individual and the licensee or registrant that engages that individual to originate secondary mortgage loans.



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

(h) ~~(f)~~—"Executive officer" means an officer, member, or partner of a licensee or registrant. The term includes the chief executive officer, president, vice president, chief financial officer, controller, or compliance officer, or an individual holding any other similar position.

(i) ~~(g)~~—"Financial licensing act" means any of the financial licensing acts, as that term is defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(j) ~~(h)~~—"Lender" means a person who, directly or indirectly, makes or offers to make secondary mortgage loans.

(k) ~~(i)~~—"Licensed secondary mortgage loan officer" means a secondary mortgage loan officer who is licensed as a mortgage loan originator **or has temporary authority to act as a mortgage loan originator** under the mortgage loan originator licensing act, **2009 PA 75, MCL 493.131 to 493.171.**

(l) ~~(j)~~—"Licensee" means a person licensed or required to be licensed under this act.

(m) ~~(k)~~—"Loan servicing customer" means a mortgagor whose secondary mortgage loan is being serviced by a servicer.

(n) ~~(l)~~—"Open-end credit" means credit extended under a plan in which both of the following apply:

(i) The licensee or registrant reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.



1 **(o)** ~~(m)~~—"Originate" means any of the following:

2 (i) To negotiate, arrange, or offer to negotiate or arrange a
3 secondary mortgage loan between a lender and 1 or more individuals.

4 (ii) To place, assist in placing, or find a secondary mortgage
5 loan for 1 or more individuals.

6 **(p)** ~~(n)~~—"Person" means an individual, corporation, limited
7 liability company, partnership, association, or other legal entity.

8 **(q)** ~~(e)~~—"Registrant" means a person that is registered or
9 required to register as a broker, lender, or servicer under this
10 act. The term does not include a depository financial institution.

11 **(r)** ~~(p)~~—"Secondary mortgage loan" means a loan that has a term
12 of 90 days or more, ~~;~~ ~~that~~ is made to a person for personal,
13 family, or household purposes, ~~;~~ ~~and that~~ is secured by a mortgage
14 on an interest in real property that is used as a dwelling and is
15 subject to a lien of 1 or more outstanding mortgages. A secondary
16 mortgage loan may be secured by other collateral in addition to
17 real property. Notwithstanding the place of execution, nominal or
18 real, of a secondary mortgage loan, if the real property that
19 secures the loan is located in this state, a secondary mortgage
20 loan is subject to this act and all other applicable laws of this
21 state.

22 **(s)** ~~(q)~~—"Secondary mortgage loan officer" means an individual
23 who is an employee or agent of a broker, lender, or servicer, ~~;~~ ~~who~~
24 originates secondary mortgage loans, ~~;~~ ~~and who~~ is not an employee
25 or agent of a depository financial institution or a subsidiary or
26 affiliate of a depository financial institution.

27 **(t)** ~~(r)~~—"Service" means the collection or remittance for a
28 lender, noteowner, or noteholder or a licensee's own account of 4
29 or more installment payments of the principal of, interest of, or



1 an amount placed in escrow under a secondary mortgage loan,
2 mortgage servicing agreement, or an agreement with a mortgagor.

3 (u) ~~(s)~~ "Servicer" means a person ~~who, that,~~ directly or
4 indirectly, services or offers to service secondary mortgage loans.

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

9 (a) The person is providing secondary mortgage loan officer
10 services as an employee or agent of only 1 broker, lender, or
11 servicer and is a licensed secondary mortgage loan officer. ~~if that~~
12 ~~registration is required under the mortgage loan originator~~
13 ~~licensing act.~~

14 (b) The person is licensed under the consumer financial
15 services act, 1988 PA 161, MCL 487.2051 to 487.2072.

16 (c) The person acts as a lender but makes or negotiates 2 or
17 fewer secondary mortgage loans in a calendar year.

18 (d) The person acts as a servicer but services 10 or fewer
19 secondary mortgage loans in a calendar year.

20 (e) The person is an individual and an employee of a
21 professional employer organization, as that term is defined in
22 section 113 of the Michigan business tax act, 2007 PA 36, MCL
23 208.1113, solely acting as a secondary mortgage loan originator of
24 only 1 broker or lender. The broker or lender shall do all of the
25 following:

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

28 (ii) Be responsible for all activities of the individual and
29 assume responsibility for the individual's actions that are covered



1 by the proof of financial responsibility deposit required under
2 section 6.

3 (2) By October 31, 1997, a servicer that was exempt from
4 regulation under this act shall either file with the commissioner
5 an application for a license or registration under section 3 or
6 discontinue all activities subject to this act.

7 (3) Except for a state or nationally chartered bank, savings
8 bank, or an affiliate of a bank or savings bank, a person subject
9 to this act shall not include in its name or assumed name the words
10 "bank", "banker", "banc", "bankcorp", "bancorp", or any other words
11 or phrases that would imply that the person is a bank, is engaged
12 in the business of banking, or is affiliated with a bank or savings
13 bank. It is not a violation of this subsection for a licensee to
14 use the term "mortgage banker" or "mortgage banking" in its name or
15 assumed name.

16 (4) A person subject to this act whose name or assumed name on
17 January 1, 1997 contained a word prohibited by subsection (3) may
18 continue to use that name or assumed name.

19 Enacting section 1. This amendatory act does not take effect
20 unless House Bill No. 5084 of the 100th Legislature is enacted into
21 law.

