HOUSE BILL NO. 5147

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

A bill to amend 1987 PA 173, entitled

"Mortgage brokers, lenders, and servicers licensing act,"

by amending sections 1a and 2 (MCL 445.1651a and 445.1652), section 1a as amended by 2012 PA 442 and section 2 as amended by 2009 PA 76.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1a. As used in this act:

(a) "Affiliate" means a person or group of persons that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with another person and engaged in a business or transaction regulated by this act.

(b) "Board" means the mortgage industry advisory board created in section 33.

(c) "Commissioner" means ~~the commissioner of the office of financial and insurance regulation of the department of licensing and regulatory affairs or his or her authorized agent.~~ **director.**

(d) "Construction loan" means a mortgage loan to construct a 1-to-4 family dwelling, that is approved and closed before completion of the construction of the improvement on the real property.

(e) "Control person" means a director or executive officer of a licensee or registrant or an individual who 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.

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

(g) ~~(f)~~ "Depository financial institution" means a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union, or an entity of the federally chartered farm credit system.

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

(i) ~~(g)~~ "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 mortgage loans.

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

(j) ~~(h)~~ "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 any other individual who holds any other similar position.

(k) ~~(i)~~ "Financial licensing act" means the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the acts listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(*l*) ~~(j)~~ "Firm commitment" means an underwriting in which a broker-dealer commits to buy the mortgage loan or the entire issue of securities based upon or backed by 1 or more mortgage loans and assumes all financial responsibility for any unsold securities.

(m) ~~(k)~~ "Individual investor" means a person that resides in this state or has its principal place of business in this state. The term does not include a bank, savings bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the investment company act of 1940, 15 USC 80a-1 to 80a-64, pension or profit sharing plan if the assets of the plan are managed by a bank or trust company or other institutional manager, financial institution, institutional manager, broker-dealer that is a member of the New York stock exchange or registered under the **former** uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703, the ~~federal national~~

~~mortgage association, the government national mortgage association, the federal home loan mortgage corporation,~~ **Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation**, or a mortgage lender or mortgage servicer.

(n) ~~(*l*)~~ "License" means a license issued under this act.

(o) ~~(m)~~ "Licensed loan officer" means a 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.**

(p) ~~(n)~~ "Licensee" means a person licensed or required to be licensed under this act.

(q) ~~(o)~~ "Loan officer" means an individual who is an employee or agent of a mortgage broker, mortgage lender, or mortgage servicer, ~~; who~~ originates mortgage loans, ~~;~~ and ~~who~~ is not an employee or agent of a depository financial institution or a subsidiary or affiliate of a depository financial institution.

(r) ~~(p)~~ "Mortgage broker" means a person that, directly or indirectly, does 1 or both of the following:

(*i*) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.

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

(s) ~~(q)~~ "Mortgage lender" means a person that, directly or indirectly, makes or offers to make mortgage loans.

(t) ~~(r)~~ "Mortgage loan" means a loan secured by a first mortgage on real property located in this state and used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families or a land contract covering real property located in this state used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families. Mortgage loan does not include any of the following:

(*i*) A home improvement installment contract under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(*ii*) A loan transaction in which the proceeds are not used primarily for a personal, family, or household purpose.

(u) ~~(s)~~ "Mortgage servicer" means a person that, directly or indirectly, services or offers to service mortgage loans.

(v) ~~(t)~~ "Originate" means any of the following:

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

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

(w) ~~(u)~~ "Person" means an individual, corporation, limited liability company, partnership, association, governmental entity, or any other legal entity.

(x) ~~(v)~~ "Real estate broker" means a broker or associate broker licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(y) ~~(w)~~ "Real estate salesperson" means a salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(z) ~~(x)~~ "Register" means filing a notice with the commissioner on a form prescribed by the commissioner that notifies the commissioner of the intent to engage in the activities of a mortgage broker, mortgage lender, or mortgage servicer in this state and the payment of any fees required under this act, along with the other documents, proofs, and fees required by the commissioner.

(aa) ~~(y)~~ "Registrant" means a person that is registered under section 6 or required to register under section 6.

(bb) ~~(z)~~ "Secondary mortgage loan act" means the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81.

(cc) ~~(aa)~~ "Service" means the collection or remittance, or the right or obligation to collect or remit, for a lender, noteowner, noteholder, mortgage servicer, or the licensee's or registrant's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

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

(a) The person is providing loan officer services as an employee or agent of only 1 mortgage broker, mortgage lender, or mortgage servicer and **is** a licensed loan officer. ~~if that licensure is required under the mortgage loan originator licensing act.~~

(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, 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) 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 licensed loan officer.

(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.

(4) 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 licensed loan officer.

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

(5) 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.

(6) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, ~~the~~ **a** 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~~ **subsection** 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.

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