

# HOUSE BILL NO. 5084

October 08, 2019, Introduced by Rep. Farrington and referred to the Committee on Financial Services.

A bill to amend 2009 PA 75, entitled "Mortgage loan originator licensing act," by amending sections 3 and 5 (MCL 493.133 and 493.135), section 3 as amended by 2012 PA 150 and section 5 as amended by 2014 PA 421, and by adding sections 5a and 5b.

**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~~



1 ~~financial and insurance regulation in the department of licensing~~  
 2 ~~and regulatory affairs.~~**director.**

3 **(b) "Department" means the department of insurance and**  
 4 **financial services.**

5 **(c)** ~~(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.

8 **(d) "Director" means the director of the department.**

9 **(e)** ~~(e)~~—"Dwelling" means that term as defined in section  
 10 ~~103(v)~~**103** of the truth in lending act, 15 USC 1602.

11 **(f)** ~~(d)~~—"Employee" means an individual who meets both of the  
 12 following:

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

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

19 **(g)** ~~(e)~~—"Exempt company" means a person that meets all of the  
 20 following:

21 **(i)** Is not required to obtain a license or registration, or is  
 22 exempt from licensing or registration, under the mortgage brokers,  
 23 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to  
 24 445.1684, ~~+~~the secondary mortgage loan act, 1981 PA 125, MCL  
 25 493.51 to 493.81, ~~+~~or the consumer financial services act, 1988 PA  
 26 161, MCL 487.2051 to 487.2072.

27 **(ii)** Has a unique identifier in the nationwide mortgage  
 28 licensing system and registry.

29 **(iii)** Has been approved by the ~~commissioner~~**director** in the



1 nationwide mortgage licensing system and registry as an exempt  
2 company.

3 (h) ~~(f)~~—"Federal banking agencies" means the ~~board of~~  
4 ~~governors of the federal reserve system, the comptroller of the~~  
5 ~~currency, the director of the office of thrift supervision, the~~  
6 ~~national credit union administration, and the federal deposit~~  
7 ~~insurance corporation.~~**Board of Governors of the Federal Reserve**  
8 **System, the Comptroller of the Currency, the director of the Office**  
9 **of Thrift Supervision, the National Credit Union Administration,**  
10 **and the Federal Deposit Insurance Corporation.**

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

14 (j) ~~(h)~~—"Immediate family member" means a spouse, child,  
15 sibling, parent, grandparent, or grandchild. The term includes  
16 stepparents, stepchildren, stepsiblings, and adoptive  
17 relationships.

18 (k) ~~(i)~~—"Individual" means a natural person.

19 (l) ~~(j)~~—"Licensed mortgage loan originator" means a mortgage  
20 loan originator who holds a valid license issued by the  
21 ~~commissioner~~**director** under this act.

22 (m) ~~(k)~~—"Loan processor or underwriter" means an individual  
23 who performs clerical or support duties as an employee at the  
24 direction of and subject to the supervision and instruction of a  
25 person licensed or designated as exempt from licensing under the  
26 mortgage brokers, lenders, and servicers licensing act, 1987 PA  
27 173, MCL 445.1651 to 445.1684, ~~+~~the secondary mortgage loan act,  
28 1981 PA 125, MCL 493.51 to 493.81, ~~+~~or the consumer financial  
29 services act, 1988 PA 161, MCL 487.2051 to 487.2072. For purposes



1 of this subdivision, "clerical or support duties" may include any  
2 of the following after an application is received:

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

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

11 (n) ~~(l)~~ "Mortgage loan originator" means an individual who  
12 originates residential mortgage loans and meets all of the  
13 following:

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

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

21 (iii) Is not a person solely involved in extensions of credit  
22 relating to timeshare plans, as that term is defined in 11 USC  
23 101(53D).

24 ~~(m) "Originate" means do any of the following for compensation~~  
25 ~~or gain, or in the expectation of compensation or gain, in~~  
26 ~~connection with a residential mortgage loan:~~

27 ~~(i) Take a residential mortgage loan application.~~

28 ~~(ii) Offer or negotiate terms of a residential mortgage loan.~~

29 (o) ~~(n)~~ "Mortgage servicer" means a person ~~who~~ **that** directly



1 or indirectly services or offers to service residential mortgage  
2 loans.

3 **(p)** ~~(o)~~—"Nationwide mortgage licensing system and registry"  
4 means a mortgage licensing system developed and maintained by the  
5 conference of state bank supervisors and the American association  
6 of residential mortgage regulators for the licensing and  
7 registration of licensed mortgage loan originators.

8 **(q)** ~~(p)~~—"Nontraditional mortgage product" means any mortgage  
9 product other than a 30-year fixed rate mortgage.

10 **(r)** "Office of financial and insurance regulation" means the  
11 department.

12 **(s)** "Originate" means to do any of the following for  
13 compensation or gain, or in the expectation of compensation or  
14 gain, in connection with a residential mortgage loan:

15 **(i)** Take a residential mortgage loan application.

16 **(ii)** Offer or negotiate terms of a residential mortgage loan.

17 **(t)** ~~(q)~~—"Person" means an individual, corporation, limited  
18 liability company, partnership, association, or other legal entity.

19 **(u)** ~~(r)~~—"Real estate brokerage activity" means ~~any~~**an** activity  
20 that involves offering or providing real estate brokerage services  
21 to the public, including, but not limited to, any of the following:

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

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

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



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

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

6 (v) ~~(s)~~—"Registered mortgage loan originator" means an  
 7 individual who meets all of the following:

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

10 (A) A depository institution.

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

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

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

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

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

26 (y) ~~(v)~~—"SAFE act" means the secure and fair enforcement for  
 27 mortgage licensing act of 2008, ~~Public Law 110-289~~, 12 USC 5101 to  
 28 ~~5116-5117~~.

29 (z) ~~(w)~~—"Service" means the collection or remittance for a



1 lender, noteowner, or noteholder or a person's own account of 4 or  
 2 more installment payments of the principal of, interest of, or an  
 3 amount placed in escrow under a residential mortgage loan, mortgage  
 4 servicing agreement, or an agreement with a mortgagor.

5 (aa) ~~(x)~~—"Sponsor" means a person that meets all of the  
 6 following:

7 (i) Has a unique identifier in the nationwide mortgage  
 8 licensing system and registry.

9 (ii) Is approved by the ~~commissioner~~**director** in the nationwide  
 10 mortgage licensing system and registry as an exempt company or as a  
 11 person licensed or registered under the mortgage brokers, lenders,  
 12 and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684,  
 13 the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81,  
 14 or the consumer financial services act, 1988 PA 161, MCL 487.2051  
 15 to 487.2072.

16 (iii) Has indicated in the nationwide mortgage licensing system  
 17 and registry that an individual will act as a mortgage loan  
 18 originator for that person under that person's specific license,  
 19 registration, or status as an exempt company.

20 (bb) ~~(y)~~—"Unique identifier" means a number or other  
 21 identifier assigned by protocols established by the nationwide  
 22 mortgage licensing system and registry.

23 Sec. 5. (1) Unless specifically exempted under subsection (2),  
 24 beginning July 31, 2010, **and except as provided in sections 5a and**  
 25 **5b**, an individual shall not engage in the business of a mortgage  
 26 loan originator with respect to any dwelling located in this state  
 27 without first obtaining and maintaining annually a license under  
 28 this act. Each licensed mortgage loan originator ~~must~~**shall**  
 29 register with and maintain a valid unique identifier issued by the



1 nationwide mortgage licensing system and registry.

2 (2) Each of the following is exempt from this act:

3 (a) A registered mortgage loan originator, when acting for an  
4 entity described in section ~~3(s)(i)(A)~~, **3(v)(i)(A)**, (B), or (C).

5 (b) An individual who offers or negotiates terms of a  
6 residential mortgage loan with or on behalf of an immediate family  
7 member of that individual.

8 (c) An individual who offers or negotiates terms of a  
9 residential mortgage loan secured by a dwelling that served as his  
10 or her residence.

11 (d) A licensed attorney who negotiates the terms of a  
12 residential mortgage loan on behalf of a client as an ancillary  
13 matter to the attorney's representation of the client, unless the  
14 attorney is compensated by a lender, mortgage broker, or other  
15 mortgage loan originator or by any agent of a lender, mortgage  
16 broker, or other mortgage loan originator.

17 (e) An individual who acts as a mortgage servicer, or who is  
18 an employee of a mortgage servicer, who offers or negotiates the  
19 terms of residential mortgage loans for the purpose of  
20 renegotiating, modifying, replacing, or subordinating the principal  
21 of existing residential mortgage loans of which the borrowers are  
22 behind in making their payments, are in default, or have a  
23 reasonable likelihood of falling behind in making payments or  
24 defaulting. ~~However, the~~ **The** exemption ~~from this act~~ **provided** under  
25 this subdivision does not apply to an individual who acts as a  
26 mortgage servicer, or is an employee of a mortgage servicer, who  
27 offers or negotiates the terms of a residential mortgage loan  
28 transaction that constitutes a refinancing under 12 CFR 1026.20(a)  
29 or that obligates a different consumer to pay the existing





1 residential mortgage loan.

2 (3) A loan processor or underwriter who is an independent  
3 contractor may not engage in the activities of a loan processor or  
4 underwriter unless that independent contractor loan processor or  
5 underwriter obtains and maintains a license under subsection (1).  
6 Each independent contractor loan processor or underwriter licensed  
7 as a mortgage loan originator ~~must~~**shall** have and maintain a valid  
8 unique identifier issued by the nationwide mortgage licensing  
9 system and registry.

10 (4) The ~~commissioner~~**director** may establish licensing rules  
11 and interim procedures for licensing and acceptance of  
12 applications. For previously registered or licensed individuals,  
13 the ~~commissioner~~**director** may establish expedited review and  
14 licensing procedures.

15 **Sec. 5a. (1) An individual who is a registered mortgage loan**  
16 **originator, upon becoming employed by an entity that is not an**  
17 **entity described in section 3(v) (i) (A), (B), or (C), shall have**  
18 **temporary authority to act as a mortgage loan originator for the**  
19 **period described in subsection (2) without first obtaining a**  
20 **license under this act if all of the following apply:**

21 (a) The individual has not had an application for a mortgage  
22 loan originator license denied or a mortgage loan originator  
23 license revoked or suspended in this state or any other state.

24 (b) The individual has not been subject to, or served with, a  
25 cease and desist order in this state or any other state, or under  
26 12 USC 5113.

27 (c) The individual has not been convicted of a misdemeanor or  
28 felony that would preclude licensure under this act.

29 (d) The individual has submitted an application for a license



1 under section 7.

2 (e) The individual was registered in the nationwide mortgage  
3 licensing system and registry as a mortgage loan originator during  
4 the 1-year period immediately preceding the date on which the  
5 information required under section 7(4) is submitted.

6 (2) The period of temporary authority described in subsection  
7 (1) begins on the date on which the individual submits the  
8 information required under section 7(4) and ends on the earliest of  
9 the following dates:

10 (a) The date on which the individual withdraws the application  
11 submitted under section 7.

12 (b) The date on which the director denies, or issues a notice  
13 of intent to deny, the application.

14 (c) The date on which the director approves the application.

15 (d) The date that is 120 days after the date on which the  
16 individual submits the application under section 7, if the  
17 application is listed on the nationwide mortgage licensing system  
18 and registry as incomplete.

19 Sec. 5b. (1) An individual who is a mortgage loan originator  
20 licensed in another state shall have temporary authority to act as  
21 a mortgage loan originator in this state for the period described  
22 in subsection (2) without first obtaining a license under this act  
23 if all of the following apply:

24 (a) The individual meets the requirements listed in section 5a  
25 (1) (a) to (d), as determined by the department.

26 (b) The individual is employed by an entity that is a licensee  
27 or registrant under the mortgage brokers, lenders, and servicers  
28 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary  
29 mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the



1 consumer financial services act, 1988 PA 161, MCL 487.2051 to  
2 487.2072.

3 (c) The individual was licensed in another state during the  
4 30-day period immediately preceding the date on which the  
5 information required under section 7(4) is submitted.

6 (2) The period of temporary authority described in subsection  
7 (1) begins on the date on which the individual submits the  
8 information required under section 7(4) and ends on the earliest of  
9 the following dates:

10 (a) The date on which the individual withdraws the application  
11 submitted under section 7.

12 (b) The date on which the director denies, or issues a notice  
13 of intent to deny, the application.

14 (c) The date on which the director approves the application.

15 (d) The date that is 120 days after the date on which the  
16 individual submits the application, if the application is listed on  
17 the nationwide mortgage licensing system and registry as  
18 incomplete.

