

Act No. 141  
Public Acts of 2019  
Approved by the Governor  
December 4, 2019  
Filed with the Secretary of State  
December 5, 2019  
EFFECTIVE DATE: December 5, 2019

**STATE OF MICHIGAN  
100TH LEGISLATURE  
REGULAR SESSION OF 2019**

Introduced by Rep. Farrington

# ENROLLED HOUSE BILL No. 5084

AN ACT to amend 2009 PA 75, entitled “An act to provide for the licensing of mortgage loan originators; to regulate the business practices of mortgage loan originators; to establish certain obligations of employees and principals of mortgage loan originators; to prescribe the powers and duties of certain state agencies and officials; and to provide remedies and prescribe penalties,” 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, 5b, and 5c.

*The People of the State of Michigan enact:*

Sec. 3. As used in this act:

- (a) “Commissioner” means the director.
- (b) “Department” means the department of insurance and financial services.
- (c) “Depository institution” means that term as defined in section 3 of the federal deposit insurance act, 12 USC 1813, or a credit union.
- (d) “Director” means the director of the department or his or her designee.
- (e) “Dwelling” means that term as defined in section 103 of the truth in lending act, 15 USC 1602.
- (f) “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.
- (g) “Exempt company” means a person that meets all of the following:
  - (i) Is not required to obtain a license or registration, or is exempt from licensing or registration, 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.
  - (ii) Has a unique identifier in the nationwide mortgage licensing system and registry.
  - (iii) Has been approved by the director in the nationwide mortgage licensing system and registry as an exempt company.
- (h) “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.

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

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

(k) “Individual” means a natural person.

(l) “Licensed mortgage loan originator” means a mortgage loan originator who holds a valid license issued by the director under this act.

(m) “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.

(n) “Mortgage loan originator” means an individual who originates residential mortgage loans and meets all of the following:

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

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

(o) “Mortgage servicer” means a person that directly or indirectly services or offers to service residential mortgage loans.

(p) “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.

(q) “Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(r) “Office of financial and insurance regulation” means the department.

(s) “Originate” means to 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.

(t) “Person” means an individual, corporation, limited liability company, partnership, association, or other legal entity.

(u) “Real estate brokerage activity” means an 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 subparagraph (i), (ii), (iii), or (iv).

(v) “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.

(w) "Residential mortgage loan" means a 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.

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

(y) "SAFE act" means the secure and fair enforcement for mortgage licensing act of 2008, 12 USC 5101 to 5117.

(z) "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.

(aa) "Sponsor" means a person that meets all of the following:

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

(ii) Is approved by the director in the nationwide mortgage licensing system and registry as an exempt company or as a person licensed or registered 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.

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

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

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

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

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

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

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

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

(e) An individual who acts as a mortgage servicer, or who is an employee of a mortgage servicer, who offers or negotiates the terms of residential mortgage loans for the purpose of renegotiating, modifying, replacing, or subordinating the principal of existing residential mortgage loans of which the borrowers are behind in making their payments, are in default, or have a reasonable likelihood of falling behind in making payments or defaulting. The exemption provided under this subdivision does not apply to an individual who acts as a mortgage servicer, or is an employee of a mortgage servicer, who offers or negotiates the terms of a residential mortgage loan transaction that constitutes a refinancing under 12 CFR 1026.20(a) or that obligates a different consumer to pay the existing residential mortgage loan.

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

(4) The director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

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

(a) The individual is employed by an entity that is licensed or registered 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.

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

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

(d) The individual has not been convicted of, or pled guilty or no contest to, a misdemeanor or felony that would preclude licensure under this act.

(e) The individual has submitted an application for a license under section 7 and the fee required under section 19, and has met the applicable surety bond requirement described in section 29.

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

(g) The individual is not subject to a prohibition order issued under section 27 or any of the financial licensing acts.

(2) The period of temporary authority as provided in subsection (1) begins on the date on which the individual submits the information required under section 7 and the fee required under section 19, and has met the applicable surety bond requirement described in section 29, and ends on the earliest of the following dates:

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

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

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

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

(3) As used in this section, "state" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

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

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

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

(2) The period of temporary authority as provided in subsection (1) begins on the date on which the individual submits the information required under section 7 and the fee required under section 19, and has met the applicable surety bond requirement described in section 29, and ends on the earliest of the following dates:

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

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

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

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

(3) As used in this section, "state" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Sec. 5c. With respect to the temporary authority authorized under sections 5a and 5b, both of the following apply:

(a) A person employing an individual who has the temporary authority described under section 5a or 5b to act as a mortgage loan originator in this state is subject to the applicable law of this state to the same extent as if that individual is a licensed mortgage loan originator.

(b) An individual who has the temporary authority described under section 5a or 5b to act as a mortgage loan originator in this state and who engages in residential mortgage loan origination activities is subject to the applicable law of this state to the extent as if that individual is a licensed mortgage loan originator.

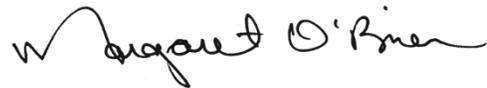
Enacting section 1. This amendatory act takes effect November 24, 2019.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved \_\_\_\_\_

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Governor