

SENATE BILL No. 908

January 25, 2012, Introduced by Senator BOOHER 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 5 (MCL 493.133 and 493.135), section 3
as amended by 2010 PA 356.

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.~~ **LICENSING AND REGULATORY AFFAIRS.**

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.

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

10 (d) "Employee" means an individual who meets both of the

1 following:

2 (i) Has an employment relationship acknowledged by that
3 individual and the person that engages that individual to originate
4 mortgage loans.

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

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

13 (f) "Financial licensing acts" means that term as defined in
14 section 2 of the consumer financial services act, 1988 PA 161, MCL
15 487.2052.

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

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

20 (i) "Licensed mortgage loan originator" means a mortgage loan
21 originator who holds a valid license issued by the commissioner
22 under this act.

23 ~~—— (j) "Loan modification activities" means any of the following:~~

24 ~~—— (i) Collecting or receiving payments, including payments of~~
25 ~~principal, interest, escrow amounts, and other amounts due, on~~
26 ~~existing residential mortgage loans due and owing to a mortgagor or~~
27 ~~mortgage servicer, when the borrower is in default or in reasonably~~

1 ~~foreseeable likelihood of default.~~

2 ~~—— (ii) Working with a borrower described in subparagraph (i) to~~
3 ~~collect data concerning the borrower's residential mortgage loan or~~
4 ~~loans.~~

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

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

25 (i) The receipt, collection, distribution, and analysis of
26 information common for the processing or underwriting of a
27 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.

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

(L) ~~(M)~~—"Originate" means 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.

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

(N) ~~(O)~~—"Nationwide mortgage licensing system and registry"

1 means a mortgage licensing system developed and maintained by the
2 conference of state bank supervisors and the American association
3 of residential mortgage regulators for the licensing and
4 registration of licensed mortgage loan originators.

5 (O) ~~(p)~~—"Nontraditional mortgage product" means any mortgage
6 product other than a 30-year fixed rate mortgage.

7 (P) ~~(q)~~—"Person" means an individual, corporation, limited
8 liability company, partnership, association, or other legal entity.

9 (Q) ~~(r)~~—"Real estate brokerage activity" means any activity
10 that involves offering or providing real estate brokerage services
11 to the public, including, but not limited to, any of the following:

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

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

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

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

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

25 (R) ~~(s)~~—"Registered mortgage loan originator" means an
26 individual who meets all of the following:

27 (i) Is a mortgage loan originator and is an employee of any of

1 the following:

2 (A) A depository institution.

3 (B) A subsidiary of a depository institution that is owned and
4 controlled by that depository institution and is regulated by a
5 federal banking agency.

6 (C) An institution regulated by the farm credit
7 administration.

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

10 (S) ~~(t)~~ "Residential mortgage loan" means any loan primarily
11 for personal, family, or household use that is secured by a
12 mortgage, deed of trust, or other equivalent consensual security
13 interest on a dwelling or residential real estate on which a person
14 has constructed or intends to construct a dwelling.

15 (T) ~~(u)~~ "Residential real estate" means any real property
16 located in this state on which a person has constructed or intends
17 to construct a dwelling.

18 (U) ~~(v)~~ "SAFE act" means the secure and fair enforcement for
19 mortgage licensing act of 2008, ~~title V of the housing and economic~~
20 ~~recovery act of 2008, Public Law 110-289,~~ 12 USC 5101 to 5116.

21 (V) ~~(w)~~ "Service" means the collection or remittance for a
22 lender, noteowner, or noteholder or a person's own account of 4 or
23 more installment payments of the principal of, interest of, or an
24 amount placed in escrow under a residential mortgage loan, mortgage
25 servicing agreement, or an agreement with a mortgagor.

26 (W) ~~(x)~~ "Unique identifier" means a number or other identifier
27 assigned by protocols established by the nationwide mortgage

1 licensing system and registry.

2 Sec. 5. (1) ~~Subject to subsection (5), unless~~ **UNLESS**
3 specifically exempted under subsection (2), beginning July 31,
4 2010, an individual shall not engage in the business of a mortgage
5 loan originator with respect to any dwelling located in this state
6 without first obtaining and maintaining annually a license under
7 this act. Each licensed mortgage loan originator must register with
8 and maintain a valid unique identifier issued by the nationwide
9 mortgage licensing system and registry.

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

11 (a) A registered mortgage loan originator, when acting for an
12 entity described **IN** section 3(r)(i)(A), (B), or (C).

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

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

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

25 (3) A loan processor or underwriter who is an independent
26 contractor may not engage in the activities of a loan processor or
27 underwriter unless that independent contractor loan processor or

1 underwriter obtains and maintains a license under subsection (1).
2 Each independent contractor loan processor or underwriter licensed
3 as a mortgage loan originator must have and maintain a valid unique
4 identifier issued by the nationwide mortgage licensing system and
5 registry.

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

10 ~~—— (5) An individual engaged in the business of a mortgage loan~~
11 ~~originator is not required to obtain and maintain a license under~~
12 ~~this act until July 31, 2011 if that individual is employed~~
13 ~~exclusively by a mortgage servicer; if that individual is~~
14 ~~authorized to perform loan modification activities concerning~~
15 ~~existing residential mortgage loans, and not to originate new~~
16 ~~residential mortgage loans or perform any other activities of a~~
17 ~~mortgage loan originator, on behalf of that mortgage servicer; and~~
18 ~~if this extension of time is not inconsistent with any guideline,~~
19 ~~rule, regulation, or interpretative letter of the United States~~
20 ~~department of housing and urban development concerning the~~
21 ~~interpretation of the SAFE act and its applicability to loan~~
22 ~~modification activities.~~