

# Michigan Senate Bills 462, 463, 464 Become Effective

August 24, 2010

## McGlinchey Consumer Finance Alert

On July 31, 2010, the Michigan Mortgage Loan Originator Licensing Act and amendments to the Michigan Mortgage Brokers, Lenders and Servicers Licensing Act and Secondary Mortgage Loan Act, enacted pursuant to Senate Bills 462, 463 and 464, became effective.

The Mortgage Loan Originator Licensing Act (Mich. Comp. Laws §§ 493.131 – 493.171) sets forth the licensing requirements and regulation of mortgage loan originators. The Act differs from the model SAFE Act in that it defines “employee” as an individual who meets both of the following: (i) Has an employment relationship acknowledged by that individual and the licensee or registrant that engages the individual to originate mortgage loans; and (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. The Act also includes definitions of “mortgage servicer,” “real estate brokerage activity” and “service” not found in the Model Act. It does not include a definition of “loan officer”, which is, however, defined under the Mortgage Brokers, Lenders and Servicers Licensing Act and the Secondary Mortgage Loan Act. The Act does not require an individual engaged in the business of a mortgage loan originator to obtain and maintain a license under the Act until July 31, 2011, if that individual is employed exclusively by a mortgage servicer and if that individual is authorized to perform loan modification activities concerning existing residential mortgage loans, and not to originate new residential mortgage loans or perform any other activities of a mortgage loan originator. It does require an individual surety bond for each loan originator in a minimum amount of \$10,000.

The amendments to the Mortgage Brokers, Lenders and Servicers Licensing Act (Mich. Comp. Laws §§ 445.1651 – 445.1684) and the Secondary Mortgage Loan Act (Mich. Comp. Laws §§ 493.51 – 493.81) replace all references to mortgage loan officer registrants with corresponding references to mortgage loan officer licensees. The new acts delete requirements for the licensing and regulation of mortgage loan officers and secondary mortgage loan officers, who will be, instead, regulated by the Michigan Mortgage Loan Originator Licensing Act. Powers of the Commissioner to regulate mortgage loan officers and secondary mortgage loan officers under the act are also deleted and can be found in the Mortgage Loan Originator Licensing Act, except that both provide that a person who acts as a mortgage loan officer or secondary mortgage loan officer in the state and is not a licensed under the Mortgage Loan Originator Licensing Act is guilty of a misdemeanor punishable by a fine of not more than \$15,000, imprisonment for not more than 1 year, or both. The Mortgage Brokers, Lenders and

Servicing Licensing Act's definition of "licensee" removes the inclusion of a licensee under the Consumer Financial Services Act. Finally, references to exclusive brokers are deleted in the new Secondary Mortgage Loan Act.