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SECONDARY MORTGAGE ACT

Senate Bill 413 as passed by the Senate
First Analysis (6-3-97)

Sponsor: Sen. Michael J. Bouchard
Senate Committee: Financial Services
House Committee: Commerce

THE APPARENT PROBLEM:

When the Secondary Mortgage Loan Act was enacted in 1981, it was touted as beneficial to both the consumer finance industry (in those days sometimes referred to as "small loan companies") and to borrowers. It permitted the consumer finance industry to participate in what was then said to be the fastest growing area of consumer financing, second mortgages and home equity borrowing, which they had previously not been allowed to do, unlike other financial institutions. It gave prospective borrowers another source of financing, which was said to be particularly of benefit to those who had encountered difficulty in obtaining financing from other sources; it allowed more people to use (or "unlock") the equity in their homes, which was recognized as a significant source of "savings", particularly at a time of increasing property values and high inflation. The act, which did not affect banks, savings and loans, insurance companies, and other financial institutions already engaged in second mortgage transactions, created a new license to be issued by the Financial Institutions Bureau, regulated the contents of loan agreements and the fees and charges associated with loans, and provided penalties for violations, including civil fines and forfeiture of interest.

According to the Financial Institutions Bureau, the market for second mortgages has undergone major changes since the Secondary Mortgage Loan Act was enacted, including rapid growth in the use of brokers and in the securitization of second mortgage loans. A modernization of the act has been developed out of discussions among regulators, entities in the first and second mortgage industries, and other financial service trade associations.

THE CONTENT OF THE BILL:

The bill would amend the Secondary Mortgage Loan Act to eliminate the current license fee and examination fee and require, instead, that an applicant for licensure or registration under the act pay an investigation fee and that entities licensed or registered under the act pay an annual operating fee based on their volume of secondary mortgage activity in the previous year. Total revenue from fees would be limited to the estimated cost of enforcing the act. The bill would require one license fee or registration fee to be assessed for each entity subject to the act rather than requiring a separate license for each office location.

The bill would require that certain kinds of entities register with the Commissioner of the Financial Institutions Bureau in lieu of licensure. (This would include entities approved as sellers or servicers by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association; entities approved as issuers or servicers by the Government National Mortgage Association; entities licensed under the state Mortgage Brokers, Lenders, and Servicers Licensing Act and some entities registered under that act; and entities that are subsidiaries of depository financial institutions or holding companies without an office in the state.) The bill would also extend the act to regulate servicers of secondary mortgage loans. New definitions would be provided of "broker", "exclusive broker", "lender", "servicer", and other terms.

The bill would grant the FIB commissioner a broader range of regulatory enforcement options, including the authority to issue cease and desist orders, assess civil fines, appoint conservators, and summarily suspend a license or registration if there is an imminent threat of financial loss or threat to public welfare.

Also, the bill would permit the payment of a higher up-front fee on a secondary mortgage loan to reduce interest rate charges. Licensees and registrants could charge a pre-payment fee not to exceed the amount permitted for first mortgages and could impose charges permitted under federal lending programs designed to promote mortgage lending.

The $3,000 minimum for a secondary mortgage loan would be removed, and loans could be secured by other collateral in addition to real estate.

The bill would rewrite the provision that says the act is not to be construed to have any effect on the existing powers of state and national banks, savings and loans, or insurance companies that were already engaged in issuing second mortgages. The bill would specify that the act does not apply to a depository financial institution subject to state or federal laws regarding second mortgages and does not apply to an affiliate or subsidiary of a depository financial institution or holding company if the institution maintained an office or branch office in the state.

MCL 493.51 et al.

FISCAL IMPLICATIONS:

The bill is intended to be revenue neutral, according to the Financial Institutions Bureau. Under the act, the total revenue from fees on licensees and registrants is supposed to be limited to the estimated cost of enforcing the act. (5-28-97)

ARGUMENTS:

For:

The bill would modernize the Secondary Mortgage Loan Act to reflect the dramatic changes in this area of finance over the past 15 years or so. (In the meantime, for example, this has become one of the few forms of borrowing with interest deductible against federal income taxes.) While the bill is intended to be revenue neutral, it restructures the fee system to make it volume sensitive (based on a company's previous year's activity) rather than based on annual inspections, much like the system under the Mortgage Brokers, Lenders, and Servicers Licensing Act. Indeed, a number of this bill's provisions make the same kind of changes to the Secondary Mortgage Act made last year (in Senate Bill 871) to the act regulating mortgage brokers. This includes increasing the amounts required to demonstrate financial responsibility. The bill intends that regulators focus fewer resources on companies in compliance with the act and concentrate more resources on suspected violations. A wider range of enforcement tools is also provided.

POSITIONS:

Among those indicating support for the bill to the House Commerce Committee were the Financial Institutions Bureau, the Michigan Mortgage Brokers Association, the Mortgage Bankers Association, and the Michigan Bankers Association. (5-28-97)

Analyst: C. Couch

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.