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CREATE CONSUMER MORTGAGE PROTECTION ACT

House Bill 6121

Sponsor: Rep. Andrew Richner

House Bill 6122

Sponsor: Rep. Michael Bishop

House Bill 6123

Sponsor: Rep. Mary Ann Middaugh

House Bill 6124

Sponsor: Rep. James Koetje

House Bill 6125

Sponsor: Rep. Clark Bisbee

House Bill 6126

Sponsor: Rep. Mary D. Waters

House Bill 6127

Sponsor: Rep. Bill McConico

Committee: Commerce

Complete to 5-29-02

House Bills 6121-6127 (5-29-02)

A SUMMARY OF HOUSE BILLS 6121-6127 AS INTRODUCED 5-23-02

House Bill 6121 would create the Consumer Mortgage Protection Act, which would:

- Prohibit certain acts in offering to make or making some kinds of mortgage loans (e.g., refinancing loans and home equity loans) and provide for enforcement against violations;
- Specify that the business of brokering, making, servicing, and collecting mortgage loans are to be solely regulated by federal and state governments and prohibit and preempt such regulation by municipal corporations or other political subdivisions of the state; and
- Require that, no later than March 1, 2003, the Office of Financial and Insurance Services develop and make available to local units of government, financial institutions, and other interested persons one or more model programs for financial education. The program would have to be designed to teach personal financial management skills and the basic principles involved with saving, borrowing, investing, and protection against predatory and other fraudulent lending practices.

Definition of "Mortgage Loans". The bill would define the term "mortgage loan" to refer to a loan or home improvement installment contract secured by a first or subordinate mortgage or any other form of lien or land contract covering real property located in the state used as the borrower's principal dwelling and designed for occupancy by four or fewer families. The term would not apply to loans in which the proceeds were used to acquire the dwelling; reverse-mortgages; or open-end credit plans (loans where the lender reasonably contemplated repeated advances).

House Bills 6122-6127 would each amend a separate existing act to make entities regulated under those acts also subject to the new act that House Bill 6121 would create. Each of the bills, described later, would be tie-barred to House Bill 6121.

Prohibited Acts. House Bill 6121 would require that a person (meaning an individual or entity) broker, make, or service mortgage loans in accordance with all applicable state and federal laws (and the bill contains a list of such laws). Further, the bill would:

- Prohibit a person offering to make or making a loan from 1) charging a fee for a product or service if the product or service was not actually provided to the customer; and 2) misrepresenting the amount charged by or paid to a third party for a product or service.
- Prohibit a person, appraiser, or real estate agent from making, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a mortgage loan, including the borrower's ability to qualify for a mortgage loan or the value of the dwelling that will secure repayment of the loan.
- Prohibit a person from directly or indirectly compensating, coercing, or intimidating an appraiser for the purpose of influencing his or her independent judgment with respect to the value of the dwelling offered as security for the repayment of a loan.

Deceptive and Misleading Representations. A statement or representation would be considered deceptive or misleading if it had the capacity to deceive or mislead a borrower or potential borrower. The commissioner of the Office of Financial and Insurance Services would consider the following factors in deciding whether a statement or misrepresentation was deceptive or misleading: 1) the overall impression that it reasonably created; 2) the particular type of audience to which it was directed; and 3) whether it could be reasonably comprehended by the segment of the public to which it was directed.

Commissioner's Role. The commissioner of the Office of Financial and Insurance Services could conduct examinations and investigations of a person over which he or she had regulatory authority in order to determine if the person was brokering, making, servicing, or collecting mortgage loans as required by the new act. If the commissioner determined a violation was occurring, he or she would have to initiate a cause of action with the attorney general or a county prosecutor; enforce the penalties and remedies under the appropriate state law, if the person was chartered, licensed, registered, regulated, or administered under that law by the commissioner; or forward a complaint to the appropriate regulatory or investigatory authority.

A.G. and Prosecutors. The attorney general or a county prosecutor could bring an action to obtain a declaratory judgment that a method, act, or practice was a violation of the act; enjoin a person engaging in or about to engage in such a method, act, or practice; and/or obtain a civil fine of not more than \$10,000 for the first offense and not more than \$20,000 for a second or subsequent offense.

Excuses and Corrections. A person would not be liable for a violation if the person showed it was an unintentional and bona fide error, including a clerical, calculation, computer malfunction, programming, or printing error. However, an error in legal judgment with respect to a person's obligations would not be a bona fide error. A person would also not be liable for a violation if, within 60 days of the discovery of the violation and before the institution of an action, the person notified the borrower or buyer of the violation and corrected it so as to restore the borrower or buyer to the position he or she would have been in if the violation had not occurred (to the extent it was reasonably possible to do so.) The person alleged to have committed the violation would have the burden of proving he or she is not liable.

Preemption of Local Regulation. The bill would specify that any charter, ordinance, regulation, rule, or other action by a municipal corporation or other political subdivision of the state to regulate, directly or indirectly, the brokering, making, servicing, or collecting of mortgage loans would constitute a statutory conflict with the uniform operation throughout the state of residential mortgage lending and would be preempted. This would include local actions to disqualify a person, or its subsidiaries or affiliates, from doing business with the municipal corporation or other political subdivision or to impose reporting requirements or other obligations. The bill would specify that the laws of this state regarding brokering, making, servicing, and collecting of mortgage loans prescribed rules of conduct upon citizens generally, constituted a comprehensive regulatory framework intended to operate uniformly throughout the state under the same circumstances and conditions, and constituted general laws of the state. It would further specify that silence in the statutes regarding mortgage loans was not to be interpreted to mean that the state had not completely occupied the field or had set only minimum standards.

Statement of Intent. The bill would specify that "It is the intent of the legislature to entirely preempt municipal corporations and other political subdivisions from the regulation and licensing of persons engaged in the brokering, making, servicing, or collecting of mortgage loans in the state".

House Bill 6122 would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1674a). House Bill 6123 would amend the Credit Union Act (MCL 490.10a). House Bill 6124 would amend the Savings Bank Act (MCL 487.3435). House Bill 6125 would amend the Banking Code of 1999 (MCL 487.14206). House Bill 6126 would amend the Secondary Mortgage Loan Act (MCL 493.74a). House Bill 6127 would amend the Savings and Loan Act of 1980 (MCL 491.737).

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.