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Senate Bills 776 through 780 (as introduced 10-23-01)

Sponsor: Senator Glenn D. Steil

Committee: Banking and Financial Institutions

Date Completed: 10-24-01

CONTENT

Senate Bills 776 through 780 would amend various statutes to allow the Commissioner of the Office of Financial and Insurance Services to prohibit a person who had engaged in fraud from being an employee, agent, or control person of a licensee or registrant under any of the acts. Several of the bills also would authorize the Commission to suspend a license or issue a cease and desist order upon a licensee. Senate Bill 776 would amend the Consumer Financial Services Act; Senate Bill 777 would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act; Senate Bill 778 would amend the Secondary Mortgage Loan Act; Senate Bill 779 would amend the Regulatory Loan Act; and Senate Bill 780 would amend the Sale of Checks Act.

Notice & Order

If in the opinion of the Commissioner, a person (an individual or a legal entity) had engaged in fraud, the Commissioner could serve upon that person a written notice of intention to prohibit the person from being an employee, agent, or control person of a licensee under the Act or a licensee or registrant under a financial licensing act. (The term "fraud" would include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud. "Control person" would mean a director or executive officer of a licensee or a person having the authority to participate in the direction of the management or policies of a licensee.)

The notice would have to contain a statement of the facts supporting the prohibition and set a hearing to be held within 60 days after the date of the notice. If the person did not appear at the hearing, the person would be considered to have consented to the order pursuant to the notice.

If the Commissioner found after the hearing that any of the grounds specified in the notice had been established, the Commissioner could issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or a control person of any licensee under the Act or a licensee or registrant under a financial licensing act.

An order issued by the Commissioner would become effective upon service on the person. The Commissioner also would have to serve a copy of the order upon the licensee of which the person was an employee, agent, or control person. The order would remain effective until it was stayed, modified, terminated, or set aside by the Commissioner or a reviewing court. After five years from the date the order was issued, the person subject to it could apply to the Commissioner to terminate the order.

If the Commissioner considered that a person who was served a notice posed an imminent threat of financial loss to applicants for loans, mortgage loans, secondary mortgage loans, credit card arrangements, or installment sales credit, borrowers on loans, obligors on installment sale contracts, loan servicing customers, purchasers of mortgage loans or interests in mortgage loans, or purchasers of checks from a licensee, the Commissioner could serve upon the person an order of suspension from being employed by, an agent of, or a control person of any licensee. The suspension would be effective on the date the order was issued, unless stayed by a court, and would remain in effect pending the completion of a review and the Commissioner had dismissed the charges specified in the order. Unless otherwise agreed to by the Commissioner and the person served with an order, the hearing required under the bills to review the suspension would have to be held at least five but not more than 20 days after the date of the notice.

If a person were convicted of a felony involving fraud, dishonesty, or breach of trust, the Commissioner could issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or a control person of any licensee under the Act or a licensee or registrant under a financial licensing act. After five years from the date of the order, the person subject to it could apply to the Commissioner to terminate the order.

The Commissioner would have to mail a copy of any notice or order issued under the bills to the licensee of which the person subject to the notice or order was an employee, agent, or control person.

Cease and Desist Order

Senate Bills 779 and 780 provide that if in the opinion of the Commissioner a licensee was, had, or was about to engage in a practice that posed a threat of financial loss or threat to the public welfare or was, had, or was about to violate a law or rule, the Commissioner could serve a notice of intention to issue a cease and desist order. The notice would have to contain a statement of the facts constituting the alleged practice or violation and fix a time and place at which a hearing would be held to determine whether a cease and desist order should be issued against the licensee. If the licensee failed to appear at the hearing by a duly authorized representative, the licensee would have consented to the issuance of the order.

In the event of consent, or if, upon the record made at the hearing, the Commissioner found that the practice or violation specified in the notice had been established, the Commissioner could serve upon the licensee an order to cease and desist from the practice or violation. The order could require the licensee and its officers, directors, members, partners, trustees, employees, agents, and control persons to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation. The order would be effective on the date of service, except as specified in the order or to the extent it was stayed, modified, terminated, or set aside by the Commissioner or a court. An order issued upon consent would be effective at the time specified in the order and would remain effective and enforceable as provided in the order.

Suspension Order

Under Senate Bills 776, 779, and 780, the Commissioner would be allowed to investigate or conduct an examination of any person and conduct hearings as considered necessary to determine whether a licensee or any other person had violated the act, or whether a licensee had conducted business in a manner that would justify suspension or revocation of its license.

Upon filing a complaint or taking action against a licensee, the Commissioner could issue and serve upon a licensee an order suspending that person's license. The order would have to be

supported by an affidavit from a person familiar with the facts set forth in the affidavit and would have to contain information that an imminent threat of financial loss or threat to the public welfare existed.

The licensee would have 20 days to file with the Commissioner a request for a hearing, which would have to be scheduled within 20 days of receipt of the request. A license suspension would continue until the Commissioner found that the threat of financial loss or threat to the public welfare no longer existed.

Commissioner Decisions

A hearing under the bills would have to be conducted under the Administrative Procedures Act. Within 30 days after the Commissioner had notified the parties that the case had been submitted to him or her for final decision, the Commissioner would have to render a decision, which would have to include findings of fact supporting the decision, and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

Except in regard to a consent order, a party to the proceeding or a person affected by an order issued under the bills could obtain a judicial review of the order. A consent order could be reviewed as provided under the Administrative Procedures Act. Except for an order under judicial review, the Commissioner could terminate or set aside any order. The Commissioner could terminate or set aside an order under judicial review with the permission of the court. Unless ordered by the court, the commencement of proceedings for judicial review would not stay the Commissioner's order.

The Commissioner could apply to the circuit court of Ingham County for the enforcement of any outstanding order issued under the bills.

Violations

Any current or former executive officer, director, agent, or control person who violated a final order issued under the bills for suspension or prohibition from being a licensee or registrant would be guilty of a misdemeanor punishable by a fine of up to \$5,000 and/or imprisonment for up to a year.

A control person who was subject to an order issued under the bills and who met the following requirements would not be in violation of the order:

- The control person did not in any manner, directly or indirectly, participate in the control of a licensee after the date the order was issued.
- The control person transferred any interest he or she owned in a licensee to an unrelated third party within six months after the date the order was final.

Indemnification Agreement

Under Senate Bill 777, a licensee or registrant that conducted business through one or more exclusive brokers would be required to enter into an indemnification agreement, subject to Commissioner approval, to protect borrowers from monetary damages that could result from doing business with the exclusive brokers through which the licensee or registrant conducted business. The indemnification would have to be provided in the amount and form required in the Mortgage Brokers, Lenders, and Servicers Licensing Act.

MCL 487.2052 et al. (S.B. 776)
445.1651a et al. (S.B. 777)
493.51 et al. (S.B. 778)
493.1 et al. (S.B. 779)
487.902 et al. (S.B. 780)

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bills would allow the Office of Financial and Insurance Services to hold hearings for any of these institutions that were alleged to have violated these Acts. The cost of these additional responsibilities would be covered under the existing fee structures for these institutions as no additional revenue sources would be created. There is no information regarding the number of hearings that would be held as a result of these changes so the exact costs are not known at this time. To the extent that these responsibilities could not be covered with existing staffing levels, new staff potentially would need to be hired to handle these caseloads.

The bills would have an indeterminate impact on local government. There are no data to indicate how many offenders would be convicted of violating a final order of the Commissioner. Offenders would receive a misdemeanor fine or sentence of 0-12 months of probation or incarceration in a local facility. Local units would incur the cost of probation as well as the cost of incarceration, which may vary between \$27 and \$62 per day.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.