

Legislative Analysis



RESIDENTIAL MORTGAGE FRAUD

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House Bill 6432 and 6436
Sponsor: Rep. Fran Amos

House Bill 6434
Sponsor: Rep. Jim Marleau

House Bill 6433
Sponsor: Rep. John Pastor

House Bill 6435
Sponsor: Rep. Tom Casperson

Committee: Banking and Financial Services

Complete to 9-12-06

A SUMMARY OF HOUSE BILLS 6432 – 6436 AS INTRODUCED 9-7-06

House Bill 6432 would amend the Penal Code to provide a definition of the crime of residential mortgage fraud.

House Bill 6433 would amend the Code of Criminal Procedure to add residential mortgage fraud to the sentencing guidelines for felonies.

House Bill 6434 would amend the Occupational Code to prohibit a real estate appraiser from developing an appraisal for a real estate-related financial transaction based on a client's precondition about the appraisal's outcome.

House Bill 6435 would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to prohibit a professional regulated under the act from coercing or inducing a real estate appraiser to inflate the value of real property used as a collateral for a mortgage loan.

House Bill 6436 would amend the Michigan Consumer Protection Act to add committing residential mortgage fraud to the list of unfair, unconscionable, or deceptive acts or practices in the conduct of trade or commerce.

The following is a more detailed description of each bill.

House Bill 6432

The bill would amend Section 159(g) of the Michigan Penal Code (MCL 750.159g) to provide that a person who, with the intent to defraud, does any of the following would be guilty of the crime of residential mortgage fraud:

- Knowingly making any deliberate misstatement, misrepresentation, or omission during the mortgage lending process.

- Knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation, or omission knowing that it contains a misstatement, misrepresentation or omission, during the mortgage lending process.
- Receives any proceeds or any other money in connection with a residential mortgage closing that the person knew resulted from a violation described in the previous two paragraphs.
- Conspires to violate any of the provisions of the previous three paragraphs.
- Files or causes to be filed with the register of deeds of any county any document the person knows to contain a deliberate misstatement, misrepresentation, or omission.

Residential Mortgage Fraud. A crime of residential mortgage fraud would not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, and interpretations related to the process.

Venue of Prosecution. For the purpose of determining venue, a violation of this section would be considered to have been committed in any of the following: (a) in the county in which the residential property for which the mortgage loan obtained or sought is located; (b) in any county in which any act was performed in furtherance of the violation; (c) in any county in which any person alleged to have violated the section had control or possession of any proceeds of the violation; (d) if a loan closing occurred, in the county in which the closing occurred; (e) in any county in which a document containing a deliberate misstatement, misrepresentation, or omission is filed or recorded with the register of deeds.

Penalty. A violation would be a felony punishable by imprisonment for not more than ten years and/or a fine of up to \$50,000. However, a violation that involved engaging or participating in a pattern of residential mortgage fraud, or a conspiracy or endeavor to engage in or participate in a pattern of residential mortgage fraud, would be punishable by imprisonment for not more than 20 years and/or a fine of up to \$100,000.

Pattern of Residential Mortgage Fraud. This phrase is defined to mean one or more misstatements, misrepresentations, or omissions made during the mortgage lending process that involve two or more residential properties and that have the same or similar intents, results, accomplices, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics.]

Affirmative Defense. It would be an affirmative defense to a prosecution of a defendant (e.g., an employer) for a violation committed by an employee or agent of the defendant if the defendant demonstrates, by a preponderance of the evidence, at least all of the following:

**The defendant had in force at the time of the violation, and continues to have in force, a written policy that includes (1) a prohibition against the conduct that constitutes the

violation by employees and agents of the defendant; (2) penalties or discipline for violation of the policy; (3) a process for educating employees and agents concerning the policy, and the consequences of a violation; and (4) a requirement for a criminal history check for employees and agents and a requirement that the defendant will not employ or engage an individual whose criminal history check reveals a previous conviction of a crime involving fraud.

**The defendant demonstrates it enforces the written policy described above.

** before the violation occurred, the defendant communicated the written policy and the consequences for violating the policy to the employee or agent who committed the violation.

Separate Offense and Forfeiture Clauses. Under the bill, each residential property transaction subject to a violation constitutes a separate offense. Any real or personal property of any kind used or intended for use in the course of, derived from, or realized through a violation of this section is subject to forfeiture in the same manner as provided in Part 47 of the Revised Judicature Act of 1961.

House Bill 6433

The bill would amend Chapter XVII of the Code of Criminal Procedure (MCL 777.16I) to provide that residential mortgage fraud would be a Class D felony against the public order with a maximum sentence of 10 years. Engaging in or conspiring to engage in a pattern of residential mortgage fraud would be a class B felony against the public order with a maximum sentence of 20 years.

House Bill 6434

The bill would amend the Article 26 of Occupational Code (MCL 339.2635) to make it a violation for a licensed real estate appraiser to develop and communicate, in violation of adopted standards, an appraisal used as an investment or as collateral for a loan in a real-estate-related financial transaction a result of the client's or intended user's (1) setting preconditions on the outcome of the appraisal as a prerequisite for being selected to develop and communicate an appraisal or for obtaining future appraisal work; or (2) indicating or implying that payment for the development and communication of the appraisal is predicated upon attaining a desired minimum appraised value.

Under the bill, a licensed real estate appraiser who violates this provision would be guilty of a misdemeanor punishable by a fine of not more that \$5,000.00 and/or imprisonment for not more than three years.

House Bill 6435

The bill would amend the Mortgage Brokers, Lenders and Servicers Licensing Act (MCL 445.1679) to make it a misdemeanor to coerce or induce a real estate appraiser to inflate

the value of real property used as collateral for a mortgage loan by doing either of the following: (1) representing or implying that a real estate appraiser will not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property; (2) representing or implying that a real estate appraiser will not be paid for an appraisal unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

House Bill 6436

The bill would amend the Michigan Consumer Protection Act (MCL 445.903) to add committing residential mortgage fraud to the list of unfair, unconscionable, or deceptive acts or practices in the conduct of trade or commerce. The bill would use the definition of "residential mortgage fraud" found in House Bill 6432.

House Bills 6433 and 6436 are tie-barred to House Bill 6432 meaning neither bill would take effect unless House Bill 6432 also were enacted.

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan (other than potential correctional system costs). A related bill, House Bill 6267, contains enforcement provisions which will involve a fiscal impact. The separate analysis of House Bill 6267 describes this fiscal impact.

The bills' fiscal impact on state and local correctional systems would depend on how they affected prosecutorial charging decisions, the numbers of felony and misdemeanor convictions, and sentences imposed. The cost of any increase in prison intake or the lengths of sentences imposed would be borne by the state, at an average annual cost per prisoner of about \$30,000. Costs of felony probation supervision fall to the state, while misdemeanor probation supervision is a local responsibility. Parole and felony probation supervision cost an average of about \$2,000 per supervised offender per year; local costs of misdemeanor probation supervision vary with jurisdiction. County jail costs, which vary by county, could increase to the extent that more offenders received jail time for felony or misdemeanor offenses. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

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■ 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.