Legislative Analysis

HOUSE FISCAL AGENCY
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BROKER LICENSE EXEMPTION

Senate Bill 290
Sponsor: Sen. Randy Richardville
House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

Complete to 4-16-07

A SUMMARY OF SENATE BILL 290 AS PASSED BY THE SENATE 3-14-07

Senate Bill 290 would amend the Secondary Mortgage Loan Act to make its exemptions from licensing and registration provisions similar to exemptions already in the Mortgage Brokers, Lenders, and Servicing Act (as amended by Public Act 113 of 2005). The principal change is to add an exemption from licensure or registration for an individual who is an employee of a professional employer organization (PEO) and who is solely acting as a secondary mortgage loan originator of only one broker or lender.

The broker or lender would have to direct and control the activities of the individual under the act and be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under Section 6 of the act. (Under a PEO arrangement, generally, a company can lease employees from a PEO rather than hiring them directly.)

Currently, in order to act as a mortgage broker, lender, or servicer, Section 2 of the Secondary Mortgage Loan Act requires that a person register with or obtain a license from the Office of Financial and Insurance Services (OFIS). Under the act, acting as a broker, lender, or servicer, respectively, means that the person acts as a broker in connection with one or more secondary mortgage loans, makes or negotiates more than two secondary mortgage loans in a calendar year, or services more than 10 secondary mortgage loans in a calendar year. The act currently exempts from the licensure or registration requirement a person licensed under the Consumer Financial Services Act, a depository financial institution, or an exclusive broker and also exempts a natural person who is an employee of only one licensee or registrant.

Senate Bill 290 would revise Section 2 of the act (MCL 493.52) to instead specifically exempt a person from the registration or licensure requirements if one or more of the following applied:

- The person was solely performing services as an employee of only one broker, lender, or servicer.
- The person was an exclusive broker.
- The person was licensed under the Consumer Financial Services Act.
- The person acted as a lender but made or negotiated two or fewer secondary mortgage loans in a calendar year.

- The person acted as a servicer but serviced ten or fewer secondary mortgage loans in a calendar year.
- The person is an individual and an employee of a professional employer organization (PEO), as that term is defined in the Single Business Tax Act, solely acting as a secondary mortgage loan originator of only one broker or lender. The broker or lender would have to direct and control the activities of the individual under the act and be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under Section 6 of the act.

[Note: "Professional Employer Organization" would mean that term as defined in the Single Business Tax Act (MCL 208.4) — an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following: maintaining the right of direction and control of employees' work, although this responsibility may be shared with the other entity; paying the employees' wages and employment taxes out of its own accounts; reporting, collecting, and depositing state and federal employment taxes for the employees; and retaining the right to hire and fire employees.]

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan or its local units of government.

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