

Legislative Analysis



REGULATION OF MORTGAGE LOAN OFFICERS

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House Bill 5287 (Substitute H-2)
Sponsor: Rep. Shanelle Jackson

House Bill 5288 (Substitute H-1)
Sponsor: Rep. Andy Coulouris

Senate Bill 828 as passed by the Senate
Sponsor: Sen. Hansen Clarke

House Bill 5289 (Substitute H-1)
Sponsor: Rep. Ed Clemente

Senate Bill 829 as passed by the Senate
Sponsor: Sen. Tony Stamas

House Bill 5290 (Substitute H-1)
Sponsor: Rep. David Robertson

Senate Bill 830 as passed by the Senate
Sponsor: Sen. Tupac Hunter

House Bill 5291 as introduced
Sponsor: Rep. Darwin Booher

Senate Bill 831 as passed by the Senate
Sponsor: Sen. Dennis Olshove

Senate Bill 826 as passed by the Senate
Sponsor: Sen. Randy Richardville

Senate Bill 832 as passed by the Senate
Sponsor: Sen. Nancy Cassis

Senate Bill 827 as passed by the Senate
Sponsor: Sen. Randy Richardville

Senate Bill 833 as passed by the Senate
Sponsor: Sen. Alan Sanborn

House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

Complete to 2-6-08

A SUMMARY OF HOUSE BILLS 5287-5291 AND SENATE BILLS 826-833 AS REPORTED FROM COMMITTEE 1-31-08

All but one of the bills would amend various provisions of the Mortgage Brokers, Lenders, and Servicers Licensing Act to enact provisions concerning mortgage loan officers. Senate Bill 837 would amend the Code of Criminal Procedure to delete a sentencing guidelines provision. The bills are tie-barred to each other, meaning that no single bill could be enacted unless all of the bills in the package were enacted.

Senate Bill 828 (Definitions)

The bill would amend the act (MCL 445.1651a) to add or revise various definitions. "Loan officer" would mean an individual who is an employee of a mortgage broker, mortgage lender, or mortgage servicer; who originates mortgage loans; and who is not an employee of a depository financial institution or a subsidiary or affiliate of a depository financial institution.

"Loan officer registrant" would mean an individual currently registered under Section 2a (proposed by House Bill 5288). The bill would exclude a loan officer registrant from the present definition of "registrant."

"Originate" would mean to negotiate, arrange, or offer to negotiate or arrange a mortgage loan between a mortgage lender and one or more individuals or to place, assist in placing, or find a mortgage loan for one or more individuals.

The bill would amend the definition of "register" to include the activities of a loan officer. The bill also would include a director or executive officer of a registrant in the definition of "control person." Further, the bill would include a limited liability company (LLC) in the definition of "person."

House Bill 5287 (Loan Originations)

Currently, a person who solely performs services as an employee of only one mortgage broker, mortgage lender, or mortgage servicer does not have to be licensed or registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act. The bill would amend the act (MCL445.1652) to delete that provision and also delete the definition of the term "residential mortgage originator." Instead, the bill (and the rest of the bill package) would use the terms "loan officer" or "loan officer registrant."

Also, under the bill, a loan officer could not receive directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits for originating a mortgage loan unless both of the following were met:

- The loan officer was a loan officer registrant.
- The compensation, commission, fee, points, or other remuneration or benefits were paid by the licensee or registrant for which the loan officer originated that mortgage loan.

Conversely, a mortgage broker, mortgage lender, or mortgage servicer could not pay directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits to a loan officer who was not a loan officer registrant or to a loan officer registrant who was not an employee of that mortgage broker, mortgage lender, or mortgage servicer.

"Employee" would mean that term as defined in Section 3401 of the Internal Revenue Code. There would be a rebuttable presumption that an individual for whom a person reported compensation for federal income tax purposes on Form W-2 is an employee and that an individual for whom a person reported payments on Form 1099-Misc is not an employee.

House Bill 5288 (Registration of Loan Officers)

The bill would add a new section to the act (MCL 445.1652a) to require mortgage loan officers employed or engaged as an agent by a licensee or registrant to be registered with the Office of Insurance and Financial Services (OFIS) within 90 days of providing such services. To obtain a registration as a loan officer, a person would have to meet the following requirements, among others:

- Complete at least 24 hours of live classroom instruction in residential mortgage lending, including at least three hours of instruction concerning state and federal laws and regulations of residential mortgage lending.
- Successfully pass an examination on residential mortgage lending.

A person may act as a loan officer, without a registration, if an application for registration was pending and the person had submitted to a criminal records check (and it revealed no conviction of fraud, forgery, embezzlement, or a felony involving financial transactions or securities) and the licensee or registrant that is the employer or principal of the applicant notified OFIS that the applicant was providing services.

A registration could not be issued to an applicant who had been convicted of a felony involving fraud, embezzlement, forgery, or financial transactions or to a person previously prohibited by an order from OFIS from performing a job within the mortgage industry.

Eligible persons would be grandfathered in under the bill if certain criteria were met. In addition, the requirements to obtain a registration could be waived by OFIS for a person who held a similar license or registration with another state that had a reciprocal agreement with OFIS. Certain titles such as "loan officer," "loan originator," and "mortgage loan officer" could only be used by persons registered under the act as a loan officer registrant.

Senate Bill 829 (Renewing Registrations)

The bill would add a new section to the act (MCL 445.1652b) to establish procedures for renewing loan officer registrations. A loan officer registration would be valid for one calendar year and terminate on December 31 unless it was renewed on or before that date. To renew the registrations of the loan officer registrants who were employees or agents of a licensee or registrant, the licensee or registrant would have to submit an application for renewal before December 1 of the year of the current loan officer registrations. The applicant would have to include with the application the annual operating fee established in the act.

The application form would have to require that an applicant provide certain information described in the bill, including a statement as to whether the loan officer registrant had been subject to the denial of an application, or the revocation or suspension of a license, registration, or similar authority to practice any profession or occupation in any

jurisdiction. The applicant also would have to provide acceptable evidence that the loan officer registrant had in the immediately preceding calendar year completed at least six hours of instruction in a course or courses relevant to the residential mortgage lending industry, whose content had been approved by the commissioner.

Before a licensee or registrant applied for renewal of a registration for a loan officer registrant, the registrant would have to give the licensee or registrant an affidavit that disclosed any criminal conviction of, or plea of no contest by, the loan officer registrant during a certain period. The commissioner could not renew the registration of any loan officer who had been convicted of, or pleaded no contest to, a felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, at any time, or any other felony within the preceding 10-year period.

House Bill 5289 (Written Notice to OFIS)

The bill would add a new section to the act (MCL 445.1652c) to require a loan officer to provide written notice to OFIS within 10 days after any of the following occurred:

- Employment or agency relationship with a licensee or registrant begins or was terminated.
- The home address, phone number, or email address provided to OFIS changed.
- He or she was convicted of or pled guilty or no contest to any felony involving embezzlement, forgery, fraud, a financial transaction, or securities.

A licensee or registrant would have to provide written notice to OFIS within 20 days after hiring or engaging a person as a loan officer or terminating the employment or agency relationship of a loan officer.

Senate Bill 830 (Annual Fee)

The bill would amend the act (MCL 445.1658) to require a loan officer registrant to pay an annual fee established by OFIS. The commissioner would have to establish an amount for the annual fee that was sufficient to defray the estimated cost of administering and enforcing the loan officer registration provisions of the act.

Currently, the fee for amending or reissuing a license or registration must be at least \$50 but not more than \$200. Under the bill, this fee also would apply to amending or reissuing a loan officer registration, and the minimum amount would be \$15.

The Department of Treasury would be required to establish and administer a restricted account in the General Fund named the "MBLSLA Fund." The department would have to credit to the account all fees collected under the act or under the commissioner's authority under the act and money appropriated or received from any source. The department could use funds in the account only to provide money to the commissioner, to administer and enforce the act, and to pay other costs associated with the commissioner's regulatory obligations. Money in the account at the end of a state fiscal year could not

revert to the General Fund but would be carried over in the account to the next state fiscal year.

Senate Bill 831 (Registration References)

The bill would amend the act (MCL 445.1660) to include references to a loan officer registrant and to a loan officer registration in provisions that do the following:

- Allow a licensee or registrant to surrender a license or registration by delivering it to the commissioner.
- Provide that the surrender, revocation, or suspension of a license or registration may not affect the licensee's or registrant's civil or criminal liability for acts committed before the surrender, revocation, or suspension.
- Provide that the surrender of a license or registration does not affect a proceeding to suspend or revoke a license or registration.
- Specify that a revocation, suspension, or surrender of a license or registration may not impair or affect the obligation of a preexisting contract between the licensee or registrant and another person.
- Allow a licensee or registrant whose license or registration has been destroyed or lost to comply with these provisions by submitting a notarized affidavit of the loss.

House Bill 5290 (Powers and Duties of OFIS)

The bill would amend the act (MCL 445.1661 and 445.1662) to extend current powers and duties of the commissioner of OFIS to loan officers originating mortgage loans in the state. This would include taking such actions as registration sanctions, alerting the attorney general or a county prosecutor of a violation of the act, and issuing cease and desist orders.

House Bill 5291 (OFIS and Loan Officers)

The bill would amend the act (MCL 445.1664) to expand provisions concerning investigations by OFIS to include loan officers.

Senate Bill 832 (Registrant Prohibitions)

The bill would amend the act (MCL 445.1672a and proposed 445.1622b) to prohibit a loan officer registrant from:

- Engaging in fraud, deceit, or material misrepresentation in connection with any transaction governed by the act.
- Intentionally, or due to gross or wanton negligence, repeatedly failing to provide borrowers with any material disclosures or information required by law.
- Directly or indirectly making a false, misleading, or deceptive advertisement regarding mortgage loans or their availability.

- Being convicted of or pleading guilty or no contest to a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or any felony.
- Suppressing or withholding from the commissioner of OFIS any information that the loan officer possessed and that, if submitted, would have made him or her ineligible for registration or renewal of his or her registration at the time of application and would have allowed the commissioner to refuse to register the loan officer.
- Refusing or failing to furnish any information or making any report required by the commissioner to issue or renew a loan officer registration, or otherwise required by the commissioner, within a reasonable period of time after his or her request.

Currently, a licensee is prohibited from advertising any size of loan, security required for a loan, rate of charge, or other condition of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions, to mortgage applicants who meet the standards or qualifications prescribed by the licensee. Under the bill, this provision would apply to a registrant as well as a licensee.

Senate Bill 833 (Criminal Penalties)

The bill would amend the act (MCL 445.1679) to revise the criminal penalty for an owner, partner, member, officer, trustee, employee, agent, broker, or other person, or a representative acting on the person's authority, who does any of the following willfully or intentionally:

- Engages in the business of a mortgage broker, mortgage lender, or mortgage servicer in this state without a license or registration required under the act.
- Transfers or assigns a mortgage loan or a security directly representing an interest in one or more mortgage loans before the disbursement of at least 75 percent of the proceeds of the loan to, or for the benefit of, the borrower (subject to several exceptions).
- Transfers or assigns a mortgage loan or a security representing an interest in one or more mortgage loans to an individual investor unless specified conditions are met.

Currently, a violation is a misdemeanor punishable by a maximum fine of \$5,000, imprisonment for up to three years, or both. The bill would increase the maximum fine to \$15,000 and reduce the maximum term of imprisonment to one year. The penalty also would apply to a person who acted as a loan officer in this state without a loan officer registration required under the act.

The act authorizes the commissioner of OFIS to impose sanctions (a civil fine; license suspension, revocation, or denial; and restitution) against a licensee or registrant who violates the act or the rules promulgated under it, or a person who controls the licensee or registrant. Under the bill, these sanctions also would apply to a loan officer registrant and to a person controlling a loan officer registrant. The bill would require the

commissioner to revoke the registration of a loan officer registrant who was convicted of or pleaded no contest to a felony. Revocation of a loan officer's registration would not affect the commissioner's authority to pursue any other available remedy for that violation.

Senate Bill 826 (Mortgage Industry Advisory Board)

The bill would amend the act (MCL 445.1683) to create the seven-member Mortgage Industry Advisory Board, establish terms of members, and require it to communicate to the commissioner of the Office of Financial and Insurance Services issues of concern to the residential mortgage industry, and review and make recommendations concerning all of the following:

- Course sponsors or providers, course instructors, and the content of and materials for courses provided to loan officers and loan officer applicants.
- Content and procedures for examinations given to loan officers.
- Rules proposed under the act.
- Procedures to verify attendance at and participation in courses conducted electronically.
- Procedures for maintaining the confidentiality of personal identifying information and other information concerning licensees, registrants, and applicants for licensure or registration.
- Any other issue referred to the board by the commissioner.

Senate Bill 827 (Code of Criminal Procedure)

The bill would amend the Code of Criminal Procedure (MCL 777.14h) to delete the provision of the sentencing guidelines that categorizes a violation of the Mortgage Brokers, Lenders, and Servicers Licensing Act as a Class H offense against the public trust, with a statutory maximum of three years. This would conform to the change in the maximum term of imprisonment for this offense proposed by Senate Bill 833.

FISCAL IMPACT:

The bills, together, would require 5.0 additional FTE positions at an approximate cost of \$396,200 for the Office of Financial and Insurance Services. These costs would be supported by fees imposed on applicants for registration as a mortgage loan officer.

BACKGROUND INFORMATION:

The bills are part of a larger bipartisan, bicameral legislative package introduced to address concerns with the housing loan industry related to the large number of home foreclosures experienced in the state. The bills, which call for regulation of loan officers who originate home loans, represent a compromise between various industry members and advocates for those in danger of losing their homes that was reached after months of study, testimony, and negotiations. Supporters say the bill package is not expected to

prevent all future foreclosures, but is expected to enhance the professionalism of loan originators; address some of the issues of fraud; and enable state regulators to identify, track, and weed out bad actors and criminals acting as loan officers.

POSITIONS:

A representative of the Office of Financial and Insurance Services (OFIS) testified in support of the bills. (1-31-08)

A representative of the Michigan Mortgage Brokers Association testified in support of the bills. (1-31-07)

A representative of Michigan Mortgage Lenders testified in support of the bills. (1-31-07)

The Michigan Bankers Association indicated support for the bills. (1-31-08)

The Michigan Credit Union League indicated support for the bills. (1-31-08)

The Michigan Advocacy Project indicated support for the bills. (1-31-08)

Legislative Analyst: Susan Stutzky
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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.