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Senate Bill 342 (as reported without amendment)  
Senate Bill 343 (Substitute S-1 as reported)  
Senate Bill 356 (Substitute S-1 as reported)  
Sponsor: Senator John Pappageorge (S.B. 342 & 343)  
Senator Randy Richardville (S.B. 356)  
Committee: Banking and Financial Institutions

Date Completed: 4-9-07

## **RATIONALE**

Home prices and selling rates are declining in parts of the State and many houses are selling for much less than homeowners and mortgage lenders would like. Reportedly, this has increased the pressure that some mortgage lenders apply to real estate appraisers to inflate a property's value and thereby increase the size of a mortgage loan and/or make it more likely to secure a real estate deal. Even if a real estate appraiser opposes the practice, apparently there is little he or she can do as lenders can propose one job to several appraisers and select an appraiser who is willing to report the desired value. Some people believe that inflated, coerced, and induced real estate appraisals harm citizens and the real estate market in Michigan. It has been suggested that coercion or inducement of real estate appraisers by mortgage lenders should be prohibited.

## **CONTENT**

**Senate Bills 342, 343 (S-1), and 356 (S-1) would amend the Occupational Code, the Secondary Mortgage Loan Act, and the Mortgage Brokers, Lenders, and Servicers Licensing Act, respectively, to prohibit a person from inducing or coercing an appraiser in order to receive a predetermined appraisal, and prohibit an appraiser from developing and communicating an appraisal that was the result of conditions set by a client or intended user in order to receive a predetermined appraised value.**

The bills are described below.

## **Senate Bill 342**

The bill would amend Article 26 (Real Estate Appraisers) of the Occupational Code to establish a misdemeanor penalty for a licensed appraiser who, in violation of standards adopted under Article 26, developed and communicated an appraisal used as an investment or as collateral for a loan in a real estate-related financial transaction, by developing and communicating that appraisal as a result of the client's or intended user's doing either or both of the following:

- 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.
- Representing or implying that payment for the development and communication of the appraisal was predicated upon attaining a desired minimum appraised value.

A licensee who violated this prohibition would be guilty of a misdemeanor punishable by a maximum fine of \$5,000 or imprisonment for up to three years, or both.

## **Senate Bill 343 (S-1)**

The Secondary Mortgage Loan Act makes it a misdemeanor, punishable by a maximum fine of \$5,000 or imprisonment for up to three years, or both, for a person, association, nonprofit corporation, common law trust, joint stock company, limited liability company, or any other group of individuals, or any owner, partner, member, officer, director, trustee, employee, agent,

broker, or representative of the person or entity willfully or intentionally to engage in the business of making secondary mortgage loans without a license.

Under the bill, this penalty also would apply to a person or entity described above who willfully or intentionally coerced or induced a real estate appraiser to inflate the value of real property used as collateral for a secondary mortgage loan by doing either of the following:

- Representing or implying that a real estate appraiser would not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agreed in advance to a value, range of values, or minimum value for the real property.
- Representing or implying that a real estate appraiser would not be paid for an appraisal unless the appraiser agreed in advance to a value, range of values, or minimum value for the real property.

These provisions would not prohibit a broker or lender from communicating a sale or listing price or assessed value concerning real property used as collateral for a secondary mortgage loan to the real estate appraiser as background or supporting information concerning that real property.

### **Senate Bill 356 (S-1)**

The Mortgage Brokers, Lenders, and Servicers Licensing Act makes it a misdemeanor, punishable by a maximum fine of \$5,000 or imprisonment for up to three years, or both, for a person, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or their representative acting on the authority of that person, to commit certain violations willfully or intentionally.

Under the bill, this penalty also would apply to a person, or someone acting on the authority of a person, who willfully or intentionally coerced or induced a real estate appraiser to inflate the value of real property used as collateral for a mortgage loan by doing either of the following:

- Representing or implying that a real estate appraiser would not be selected to conduct an appraisal of the real property or selected for future appraisal work

unless the appraiser agreed in advance to a value, range of values, or minimum value for the real property.

- Representing or implying that a real estate appraiser would not be paid for an appraisal unless the appraiser agreed in advance to a value, range of values, or minimum value for the real property.

The bill would not prohibit a mortgage broker or mortgage lender from communicating a sale or listing price or assessed value concerning real property used as collateral for a secondary mortgage loan to the real estate appraiser as background or supporting information concerning that real property.

MCL 339.2635 (S.B. 342)

493.77 (S.B. 343)

445.1679 (S.B. 356)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Evidently, some mortgage lenders make an appraisal job contingent on a preconditioned outcome of the appraisal, request that an appraiser review an undesirable appraised value, threaten to take future business to other appraisers if a predetermined appraised value is not met, or refuse to pay for appraisal services already rendered when a requested appraised value is not returned. Even though many appraisers feel strongly about coerced and inflated appraisals, it can be difficult to work as an appraiser in the current real estate market without acquiescing to the suggestions or demands of mortgage lenders. The bills would restore professionalism to the process and give appraisers legal backing to oppose the practice of inflating appraisals without fear of reprisal.

#### **Supporting Argument**

As house values have decreased, it has become easier to inflate real estate appraisals, which leads to mortgages that are higher than the actual value of a house. A person who owes more money than his or her house is worth often is unable to afford his or her mortgage payments, or even pay the balance after selling the house. By reducing the number of mortgages based on

inflated property appraisals, the bills would help prevent situations that can result in foreclosure.

### **Opposing Argument**

The bills would not go far enough to eliminate coerced appraisals. Only the most egregious and obvious instances of coercion and inducement would be prohibited by Senate Bills 343 (S-1) and 356 (S-1). Lenders still could threaten the loss of future business, offer jobs only to real estate appraisers who agreed to predetermined values, or coerce or induce a real estate appraiser in any other manner that was not expressly prohibited under the bills. The bills should expand the meaning of "coerces or induces an appraiser" to cover any instance in which a mortgage lender acts with the intention of influencing the outcome of an appraisal.

Legislative Analyst: Craig Laurie

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. If a misdemeanor's sentence were more than 12 months, the State would incur the cost of incarceration in a State facility at an average annual cost of \$31,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander  
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#### **A0708\S342a**

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.