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BILL ANALYSIS

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Senate Bill 432 (as introduced 4-24-07)  
Sponsor: Senator Randy Richardville  
Committee: Banking and Financial Institutions

Date Completed: 4-24-07

### **CONTENT**

The bill would amend the Code of Criminal Procedure to delete from the sentencing guidelines general violations of the Mortgage Brokers, Lenders, and Servicers Licensing Act and a licensing violation of the Secondary Mortgage Loan Act. Those offenses are listed as Class H felonies against the public trust, with a statutory maximum penalty of three years' imprisonment.

Under the Mortgage Brokers, Lenders, and Servicers Licensing Act, a person who willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a maximum fine of \$5,000, or imprisonment for up to three years, or both:

- Engages in the business of a mortgage broker, mortgage lender, or mortgage servicer 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 75% or more of the proceeds of the mortgage loan to, or for the benefit of, the borrower, subject to various exceptions.
- Transfers or assigns a mortgage loan or a security representing an interest in one or more mortgage loans to an individual investor unless 1) the transfer or assignment is made through a broker dealer who is a member of the New York Stock Exchange; 2) the transfer or assignment is made through a broker-dealer who is registered under the Uniform Securities Act (and meets other criteria); 3) the transfer or assignment is made to a person who is believed to be a business or a knowledgeable person meeting certain net income or net worth standards; or 4) neither a transferor or assignor nor the transferee or assignee maintains its principal place of business in the State, and the transferee or assignee is not a resident of the State.

The Secondary Mortgage Loan Act makes it a misdemeanor, punishable by a maximum fine of \$5,000 and/or imprisonment for up to three years, for a person willfully or intentionally to engage in the business of making secondary mortgage loans without a license.

The bill is tie-barred to Senate Bills 343 and 356. Senate Bill 343 (S-1) would amend the Secondary Mortgage Loan Act, and Senate Bill 356 (S-1) would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act, to prohibit a person from willfully or intentionally coercing or inducing a real estate appraiser to inflate the value of real property used as collateral for a secondary mortgage loan or a mortgage loan, as applicable. Under both bills, a violation of the prohibition would be a misdemeanor punishable by a maximum fine of \$5,000 and/or imprisonment for up to three years.

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Lindsay Hollander

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