



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 826, 827, and 828 (Substitutes S-1 as reported)
Senate Bill 829 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bills 830 and 831 (Substitutes S-1 as reported)
Senate Bill 832 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 833 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Senator Randy Richardville (S.B. 826 & 827)
Senator Hansen Clarke (S.B. 828)
Senator Tony Stamas (S.B. 829)
Senator Tupac A. Hunter (S.B. 830)
Senator Dennis Olshove (S.B. 831)
Senator Nancy Cassis (S.B. 832)
Senator Alan Sanborn (S.B. 833)
Committee: Banking and Financial Institutions

CONTENT

Senate Bills 826 (S-1) and 828 (S-1) through 833 (S-1) would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to enact provisions concerning mortgage loan officers. Senate Bill 827 (S-1) would amend the Code of Criminal Procedure to delete a sentencing guidelines provision.

All of the bills are tie-barred to each other and to House Bills 5287 through 5291 (which also would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act, as described below).

Senate Bill 826 (S-1) would create the Mortgage Industry Advisory Board 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 (S-1) would 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.

Senate Bill 828 (S-1) would add or change various definitions. "Loan officer" would mean an individual who is an employee of only one 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 any of the following:

- To negotiate, arrange, or offer to negotiate or arrange a mortgage loan between a mortgage lender and one or more individuals.
- 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".

Senate Bill 829 (S-2) would establish procedures for renewing loan officer registration. 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.

Senate Bill 830 (S-1) would require a loan officer registrant to pay an annual fee established by the Commissioner. 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 (S-1) would 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.

Senate Bill 832 (S-2) would 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 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 (S-1) would 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% 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.

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 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.

(House Bill 5287 would prohibit a loan officer from receiving any compensation for originating a mortgage unless he or she were a loan officer registrant or paid by his or her employer who was a licensee or registrant under the Act. House Bill 5288 would prohibit an employee of a licensee or registrant from performing services of a loan officer unless he or she registered or otherwise complied with the Act. House Bill 5289 would require a loan officer to notify the Commissioner within 10 days of certain occurrences. House Bill 5290 would extend the Commissioner's control to loan officers employed in Michigan by mortgage brokers, lenders, and servicers doing business in the State. House Bill 5291 would prohibit the Commissioner from using a complaint in any subsequent decision to issue, renew, suspend, or revoke the loan officer registration of the person against whom the complaint was filed if the investigation did not disclose evidence of a violation.)

MCL 445.1683 (S.B. 826)

777.14h (S.B. 827)

445.1651a (S.B. 828)

Proposed MCL 445.1652b (S.B. 829)

MCL 445.1658 (S.B. 830)

445.1660 (S.B. 831)

445.1672a et al. (S.B. 832)

445.1679 (S.B. 833)

Legislative Analyst: Craig Laurie

FISCAL IMPACT

These bills would increase the regulatory responsibilities of the Office of Financial and Insurance Services (OFIS) by requiring it to regulate all mortgage loan officers. This new regulatory program would be overseen by an Advisory Board. These new responsibilities would increase the administrative costs of OFIS, which would be covered by the revenue generated through the investigation, operating, or re-issuance fee and any penalty revenue generated for noncompliance. This revenue would be deposited into a restricted fund that would be used to cover these additional costs. In addition, the bill would allow the Commissioner to assess a civil fine for noncompliance with the regulations included in these bills. The fine revenue would be deposited into the General Fund. No estimate is available for the level of revenue that would be generated.

In addition, Senate Bills 827 (S-1) and 833 (S-1) would have an indeterminate fiscal impact on State and local corrections costs. There are no data to indicate how many offenders would be convicted of the existing offenses or of acting as a loan officer without registration. To the extent that increased convictions resulted, local governments would incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. To the extent that reducing the maximum term of imprisonment would shorten incarceration time, local governments would incur decreased costs of incarceration in local facilities, and State government would incur decreased costs of incarceration, at an average annual saving of \$31,000. Additional penal fine revenue would benefit public libraries.

Date Completed: 11-2-07

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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.