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BILL ANALYSIS

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Senate Bills 826 through 833 (as enacted) **PUBLIC ACTS 64-71 of 2008**
House Bills 5287 through 5291 (as enacted) **PUBLIC ACTS 59-63 of 2008**
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)
Representative Shannelle Jackson (H.B. 5287)
Representative Andy Coulouris (H.B. 5288)
Representative Ed Clemente (H.B. 5289)
Representative David Robertson (H.B. 5290)
Representative Darwin Dooher (H.B. 5291)
Senate Committee: Banking and Financial Institutions
House Committee: Banking and Financial Services

Date Completed: 7-14-09

CONTENT

All of the bills, except Senate Bill 827, amended the Mortgage Brokers, Lenders, and Servicers Licensing Act to do the following:

-- **Prohibit an employee or agent of a licensee or registrant from acting as a loan officer without a loan officer registration.**
-- **Prohibit a loan officer from receiving any compensation, commission, or other benefits for originating a mortgage loan unless he or she is a loan officer registrant and the compensation, commission, or other benefits are paid by the licensee or registrant for which the loan officer originated that mortgage loan.**
-- **Require a licensee or registrant to conduct a criminal records check of an individual employed as a loan officer registrant.**
-- **Create the Mortgage Industry Advisory Board.**
-- **Require the Board to review and make recommendations to the Commissioner of Financial and Insurance Regulation regarding courses provided to loan officers, proposed rules, and other issues referred to the Board.**
-- **Establish procedures for renewing loan officer registration.**
-- **Require the Commissioner to establish an annual fee for loan officer registrants.**
-- **Require the Department of Treasury to create the "MBLSLA Fund", which is to be used for the Commissioner's costs and the Act's enforcement and administration.**
-- **Prohibit a loan officer registrant from engaging in fraud or deceit, intentionally failing to give borrowers material information, or withholding certain information from the Commissioner.**
-- **Revise the criminal penalty for violations of the Act.**
-- **Extend administrative sanctions to loan officer registrants who violate the Act.**
-- **Require a loan officer registrant to notify the Commissioner within 10 days after certain occurrences.**

-- Extend the Commissioner's supervisory authority to loan officers originating mortgage loans in this State.
-- Prohibit the Commissioner from using a complaint in any subsequent decision to issue, renew , suspend, or revoke the registration of a loan officer against whom a complaint is filed if an investigation does not disclose evidence of a violation.

Senate Bill 827 amended the sentencing guidelines in the Code of Criminal Procedure to delete a provision under which a violation of the Mortgage Brokers, Lenders, and Servicers Licensing Act was a Class H offense against the public trust, with a statutory maximum of three years.

All of the bills were tie-barred to each other and took effect on April 3, 2008.

All of the bills, except Senate Bill 827, are described in detail below.

Senate Bill 826

The bill created the Mortgage Industry Advisory Board. The Board must consist of the following individuals appointed by the Commissioner:

-- Two individuals who are employees or directors of, or have at least a 25% ownership interest in a licensee or registrant, selected from a list of at least three nominees provided by the Michigan Mortgage Brokers Association.
-- Two individuals who are employees or directors of, or have at least a 25% ownership interest in a licensee or registrant, selected by the Commissioner from a list of at least three nominees provided by the Michigan Mortgage Lenders Association.
-- One individual who is an employee or director of, or has at least a 25% ownership interest in a licensee or registrant that is a member of any trade association operating in the State that represents mortgage brokers, lenders, or servicers, which may recommend candidates for this position.
-- Two individuals who are employees or directors of, or have at least a 25% ownership interest in business entities that provide services to or purchase services from licensees or registrants.

The Board may not include more than one member who is employed by, is a director of, or has more than a 1% ownership interest in the same licensee, registrant, affiliate, or other person.

The term of a Board member is four years, except that for the first Board, the Commissioner had to appoint three individuals for two-year terms so that members' terms of office are staggered. An individual may not serve more than two consecutive four-year terms and the Commissioner may not reappoint an individual who serves two consecutive four-year terms on the Board for at least 12 months after the end of those terms.

The Board must review and make recommendations to the Commissioner 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 license or registration.
-- Any other issue referred to the Board by the Commissioner.

The Board also must communicate to the Commissioner issues of concern to the residential mortgage industry.

Senate Bill 828

The bill added or changed definitions, as described below.

The bill defines "board" as the Mortgage Industry Advisory Board.

The bill defines "loan officer" as 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.

The bill defines "loan officer registrant" as an individual who is currently registered under Section 2a (added by House Bill 5288).

The bill defines "originate" as 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.

Under the Act, "register" means filing a notice with the Commissioner on a form prescribed by the Commissioner that notifies him or her of the intent to engage in the activities of a mortgage broker, mortgage lender, or mortgage servicer in the State and the payment of any fees required under the Act, along with the other documents, proofs, and fees required by the Commissioner. Under the bill, this also applies to the activities of a loan officer.

"Registrant" means a person who is registered or required to be registered under the Act. The bill specifies that the term does not include a loan officer registrant.

"Control person" means a director or executive officer of a licensee or a person who has the authority to participate in the direction, directly or indirectly through one or more other people, of the management or policies of a licensee or registrant. Under the bill, the term includes a director or executive officer of a registrant.

Senate Bill 829

Under the bill, a loan officer registration is valid for one calendar year and terminates on December 31 unless it is renewed by that date.

To renew the loan officer registration of the loan officer registrants who are employees or agents of a licensee or registrant, the licensee or registrant must submit a renewal application before December 1 of the year of the current registrations. The licensee or registrant must include with the application the annual operating fee for each loan officer registrant in the application.

The Commissioner must prescribe the renewal application form and the process for submitting an application. The form must require an applicant to provide at least all of the following information about each loan officer registrant included in the application, as well as any other information required by the Commissioner:

-- The applicant's name, address, and current license or registration number.
-- The name and home address of the loan officer registrant.
-- The loan officer registrant's current registration number.

The application form also must include a statement as to whether the loan officer registrant has 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, including licensure or registration as a mortgage broker, lender, or servicer in which the loan officer held more than 25% of the ownership interest or as a loan officer.

In addition, the application form must include proof acceptable to the Commissioner that the loan officer registrant has in the past year completed at least six hours of instruction in a course or courses relevant to the residential mortgage lending industry, whose content has been approved by the Commissioner. The six hours must include at least 1.5 hours related to legal and regulatory compliance and at least one hour related to ethics and fraud prevention. A course must be provided by a person approved by the Commissioner. A course may use a live instructor or be conducted by electronic means, including the internet, digital broadcast, or satellite network. A course conducted electronically must include a method of confirm a loan officer registrant's completion.

An applicant for renewal of the registration of a loan officer registrant who has a valid, similar license or registration from another state that has a reciprocal agreement with the Commissioner concerning instruction requirements for loan officers, may satisfy these instructional requirements by submitting proof that he or she is in compliance with the instructional requirements of that state at the time of application for loan officer registration.

Before a licensee or registrant submits a renewal application for a loan officer registrant, the loan officer registrant must give the licensee or registrant an affidavit that discloses any criminal conviction of, or plea of no contest by, the loan officer registrant occurring between one of the following, as applicable, and the date of the affidavit:

-- If the renewal application is for the loan officer registrant's first renewal application, the date of the background records check provided at the time of his or her initial application.
-- If the renewal application is for the loan officer registrant's second or subsequent renewal, the date of the most recent affidavit.

The Commissioner may not renew the registration of any loan officer who has been convicted of, or pleaded no contest to, any felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities; or, within the 10-year period before the date of the renewal application, any other felony.

If an individual included in an application for loan officer registration renewal is not currently registered and his or her registration has not been renewed for more than five consecutive years, the individual must apply for loan officer registration as a new applicant. If a loan officer registrant is not currently registered but his or her registration has not been renewed for fewer than five consecutive years, however, a licensee or registrant may include in a renewal application a request to renew the loan officer's registration.

Senate Bill 830

The bill requires a loan officer registrant to pay an annual fee established by the Commissioner. The Commissioner must establish an amount for the annual fee that is sufficient to defray the estimated cost of administering and enforcing the loan officer registration provisions of the Act.

The Commissioner must establish annually a schedule of fees sufficient to pay, but not to exceed the reasonably anticipated costs of administering the Act (as previously required) and the costs of enforcing the Act.

Previously, the fee for amending or reissuing a license or registration had to be at least $50 but not more than $200. Under the bill, the fee for amending or reissuing a license, registration, or loan officer registration must be at least $15 but not more than $200.

The bill deleted a requirement that money received under the Act be deposited in the State Treasury and credited to the Financial Institutions Bureau to be used only for its operation. Instead, the Department of Treasury is required to establish and administer a restricted account in the General Fund named the "MBLSLA Fund". The Department must 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 may use the money 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 may not revert to the General Fund but must be carried over in the account to the next State fiscal year.

Senate Bill 831

Under the Act, a licensee or registrant may surrender a license or registration by delivering it to the Commissioner with written notice that the licensee or registrant is surrendering the license or registration. The surrender, revocation, or suspension of a license or registration does not affect the licensee's or registrant's civil or criminal liability for acts committed before the surrender, revocation, or suspension. The surrender of a license or registration also does not affect a proceeding to suspend or revoke a license or registration.

Except as otherwise provided by law, 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.

A licensee or registrant whose license or registration has been destroyed or lost may comply with these provisions by submitting to the Commissioner a notarized affidavit of the loss accompanied by written notice that the licensee or registrant is surrendering the license or registration.

Under the bill, these references to a licensee or registrant also include a reference to a loan officer registrant. References to a license or registration include a reference to a loan officer registration.

Senate Bill 832

The bill prohibits a loan officer registrant from doing any of the following:

-- 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.

A loan officer registrant also is prohibited from suppressing or withholding from the Commissioner any information that the loan officer possesses 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.

In addition, the bill prohibits a loan officer registrant from refusing or failing to furnish any information or make 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, as determined by the Commissioner, after his or her request.

The Act prohibits a licensee 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 applies to a registrant as well as a licensee.

Senate Bill 833

The Act makes it a misdemeanor for an owner, partner, member, officer, trustee, employee, agent, broker, or other person, or a representative acting on the person's authority, to do any of the following willfully or intentionally:

-- Engage in the business of a mortgage broker, mortgage lender, or mortgage servicer in this State without a license or registration required under the Act.
-- Transfer or assign 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).
-- Transfer or assign a mortgage loan or a security representing an interest in one or more mortgage loans to an individual investor unless specified conditions are met.

Previously, the penalty was a maximum fine of $5,000, imprisonment for up to three years, or both. The bill increased the maximum fine to $15,000 and reduced the maximum term of imprisonment to one year. The penalty also applies to a person who acts as a loan officer in this State without a loan officer registration required under the Act.

Under the Act, if the Commissioner finds that a licensee or registrant has violated the Act or the rules promulgated under it, the Commissioner may assess a civil fine against the licensee or registrant, or a person who controls the licensee or registrant, plus the costs of investigation. (The maximum fine is $1,000 per violation but not more than $10,000 for a transaction resulting in more than one violation.) The Commissioner also may suspend, revoke, or refuse to issue a license or registration, and may require the licensee, registrant, or controlling person to make restitution to each injured person.

Under the bill, these sanctions also apply to a loan officer registrant and to a person controlling a loan officer registrant. If a loan officer registrant is convicted of or pleads no contest to a felony, however, the Commissioner must revoke his or her loan officer registration. The revocation will not affect the Commissioner's authority to pursue any other available remedy, as described above.

House Bill 5287

A person may not act as a mortgage broker, lender, or servicer without first obtaining a license or registering under the Act, unless one or more exceptions apply. Previously, the Act made an exception for a person who was solely performing services as an employee of only one mortgage broker, mortgage lender, or mortgage servicer. Under the bill, that exception applied only until December 31, 2009.

Previously, unless he or she was otherwise licensed or registered under the Act, a residential mortgage originator could not receive directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits from a mortgage broker, mortgage lender, or mortgage servicer other than the employer of the residential mortgage originator.

The bill instead prohibits a loan officer from receiving directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits for originating a mortgage loan unless both of the following are met:

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

Previously, unless a residential mortgage originator was otherwise licensed or registered under the Act, 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 residential mortgage originator other than an employee of the mortgage broker, lender, or servicer. The bill instead prohibits a mortgage broker, lender, or servicer from paying any compensation, commission, fee, points, or other remuneration or benefits to any of the following:

-- A loan officer who is not a loan officer registrant.
-- A loan officer registrant who is not an employee or agent of that mortgage broker, lender, or servicer.

The bill defines "employee" as that term is defined in Section 3401 of the Internal Revenue Code. (Under Section 3401, "employee" includes an officer, employee, or elected official of the United States, a state, any political subdivision of a state, or the District of Columbia, or any agency or instrumentality of any of the foregoing. The term also includes an officer of a corporation.)

House Bill 5288

Under the bill, beginning January 1, 2009, an employee or agent of a licensee or registrant may not perform services of a loan officer unless he or she registers or otherwise complies with provisions described below.

If a licensee or registrant that employs or offers to employ, or engages or offers to engage as an agent, an individual to originate mortgage loans, the licensee or registrant must conduct a criminal records check of that individual and submit the results to the Commissioner. The criminal records check must include a check of the individual's fingerprints, taken by a law enforcement agency or other person determined by the Commissioner to be qualified to take fingerprints.

If an individual is employed or engaged as an agent to originate mortgage loans by a licensee or registrant, that individual must apply for loan officer registration within 90 days after he or she begins providing services as an employee or agent of the licensee or registrant, by submitting a written application and including with it the annual operating fee (established under Senate Bill 830).

The Commissioner must prescribe the form of application for registration as a loan officer. Subject to provisions regarding waiver of requirements (described below), the form must require an applicant to provide at least all of the following to the Commissioner:

-- The applicant's name and home address.
-- A statement as to whether the applicant has ever been convicted of, or pleaded no contest to, a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or a felony.
-- A statement as to whether the applicant has 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, including licensure or registration as a mortgage broker, lender, or servicer in which the applicant held more than 25% of the ownership interest or as a loan officer.
-- Proof in the form of a certificate of completion or other evidence acceptable to the Commissioner that the applicant has completed at least 24 hours of live professional classroom instruction in this State in an introductory course in residential mortgage lending that is sponsored or provided by a person, and taught by an instructor, approved by the Commissioner.
-- Evidence acceptable to the Commissioner that the applicant correctly answered at least 75% of the questions on an examination approved by the Commissioner that tests an applicant's knowledge of the contents of the introductory course in residential mortgage lending.
-- A copy of the results of a criminal records check.
-- Any other information required by the Commissioner.

The 24 hours of live classroom instruction must include at least three hours concerning State and Federal laws and regulations governing residential mortgage lending, whose content has been approved by the Commissioner.

An applicant for loan officer registration may perform services as a loan officer while his or her application is pending if all of the following are met:

-- The licensee or registrant that is the employer or principal of the applicant has completed the criminal records check of the applicant and submitted the results to the Commissioner.
-- The criminal records check does not disclose that the applicant has been convicted of or pleaded no contest to a felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities; or, within the 10-year period before the date of the application, any other felony.
-- The licensee or registrant that is the employer or principal of the applicant has given the Commissioner written notice that the applicant is beginning to provide services as a loan officer for the licensee or registrant.

The Commissioner may not issue a registration to any of the following:

-- An applicant who has been convicted of or pleaded no contest to a felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities; or, within the 10 years before the date of the application, any other felony.
-- An applicant for whom the Commissioner has not received the criminal records check results.
-- An applicant against whom the Commissioner has issued a prohibition order under Section 18a.

(Under Section 18a, if the Commissioner finds that a person has engaged in fraud, the Commissioner may issue an order prohibiting the person from being employed by, an agent of, or control person of a licensee or registrant.)

The Commissioner must register a loan officer who meets all of the following:

-- For the five-year period immediately preceding the bill's effective date, he or she was employed or engaged as a loan officer for at least four and a half years by one or more licensees, registrants, or people exempt from the Act under Section 25, or he or she continuously owned at least a 25% interest in a licensee or registrant.
-- He or she was not the subject of any prohibition orders issued by the Commissioner under Section 18a in the five-year period immediately preceding the bill's effective date.

-- Within eight months after the bill's effective date, he or she took the examination required above and correctly answered at least 75% of the questions on it.
-- Within eight months after the bill's effective date, he or she submitted an application described above (except for proof of completion of the instruction).
-- He or she is not an applicant to whom the Commissioner is prohibited from issuing a registration.

(Section 25 of the Act exempts certain depository financial institutions, salespeople acting as agents for residential builders or maintenance and alternation contractors, real estate brokers or salespeople who are not also mortgage brokers, lenders, or servicers, agencies or corporate instrumentalities of the United States and of Michigan and its political subdivisions, and other mortgage brokers, lenders, and servicers.)

If an applicant has a valid, similar license or registration from another state that has a reciprocal agreement with the Commissioner, the Commissioner may waive any of these requirements for loan officer registration, except the provisions under which the Commissioner may not issue a registration to an applicant who was convicted of or pleaded no contest to a felony or misdemeanor, as described above, or an applicant for whom the Commissioner has not received the criminal records check results.

The Commissioner may disclose, provide, or make available to the public the names, business addresses, and business telephone numbers of loan officer registrants. The Commissioner may not disclose, provide, or make available to the public any other personal identifying information about loan officer registrants or applicants for loan officer registration.

An individual employed or engaged as an agent by a licensee or registrant as a loan officer may not use the title or designation "loan officer", "loan originator", or "mortgage loan originator", if he or she is not a loan officer registrant. A loan officer registrant and the employer or principal of a loan officer registrant may not use the word "registered" or "certified", or any word of similar import in his or her title or designation to identify him or her as an individual who has met the registration requirements of the Act unless use of that word is approved by the Office of Financial and Insurance Regulation.

House Bill 5289

The bill requires a loan officer registrant to give written notice to the Commissioner within 10 days after any of the following:

-- His or her employment or agency relationship with a licensee or registrant is terminated.
-- He or she begins employment or an agency relationship with a licensee or registrant.
-- There is a change in the home address or any personal telephone number or personal electronic mail address he or she previously gave the Commissioner.
-- He or she is convicted of, or pleads guilty or no contest to, a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or any felony.

The bill requires a licensee or registrant to give the Commissioner written notice within 20 days after hiring or engaging an individual as a loan officer or terminating the employment of or agency relationship with a loan officer.

House Bill 5290

The Act requires the Commissioner to exercise general supervision and control over mortgage brokers, lenders, and servicers doing business in this State. The bill extends this to loan officers originating mortgage loans in this State.

The Commissioner's authority under the Act includes the following powers:

-- To deny an application for a license.
-- To bring an action in the Ingham County Circuit Court on behalf of this State against a licensee, registrant, or any other person who is participating in, or about to participate in, any unsafe or injurious practice or act in violation of the Act or a rule promulgated under it, to enjoin the person from participating in or continuing the practice or engaging in the act.

-- To suspend or revoke a license or registration in accordance with the Act.
-- To censure a licensee or registrant.

Under the bill, the Commissioner also may deny an application for a registration or loan officer registration; bring an action against a loan officer registrant; suspend or revoke a loan officer registration; and censure a loan officer registrant.

Previously, the Commissioner could advise the Attorney General or the prosecuting attorney of the county in which the business was conducted that the Commissioner believed that a licensee, registrant, or other person was violating the Act, and the Attorney General or prosecuting attorney could take appropriate legal action to enjoin the operation of the business or prosecute violations. Under the bill, if the Commissioner believes that a licensee, registrant, loan officer registrant, or other person is violating the Act, the Commissioner may advise the Attorney General or the prosecuting attorney of the county in which the mortgage broker, lender, or servicer is conducting business or in which the loan officer resides. The Attorney General or prosecuting attorney may prosecute violations or take appropriate legal action to enjoin the operation of the business of the mortgage broker, lender, or servicer, or the origination of mortgages by the loan officer.

Under the Act, notice to a licensee or registrant of intention to enter an order of license or registration suspension or revocation, or notice to an applicant of a refusal to issue a license, must be given in writing and served personally or sent by certified mail to the licensee, registrant, or applicant. Within 20 days after the notice, the licensee, registrant, or applicant may request a hearing to contest the order or refusal. If a hearing is not requested, the Commissioner must enter a final order regarding the suspension or revocation.

The bill extends these provisions to a loan officer registration and a loan officer registrant.

House Bill 5291

Under the Act, the Attorney General, the Commissioner, or any other person may file a complaint with the Commissioner alleging that a person has violated the Act or a rule promulgated or an order issued under it. Upon receiving a complaint, the Commissioner may begin an investigation.

If the investigation does not disclose evidence of a violation, the Commissioner may not use the complaint in any subsequent decision to issue, renew, suspend, or revoke the license or suspend or revoke the registration of the person against whom the complaint was filed. Under the bill, this provision applies to a license, registration, or loan officer registration.

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777.14h (S.B. 827)
445.1651a (S.B. 828)
445.1652b (S.B. 829)
445.1658 (S.B. 830)
445.1660 (S.B. 831)
445.1672a & 445.1672b (S.B. 832)
445.1679 (S.B. 833)
445.1652 (H.B. 5287)
445.1652a (H.B. 5288)
445.1652c (H.B. 5289)
445.1661 & 445.1662 (H.B. 5290)
445.1664 (H.B. 5291)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

These bills increase the regulatory responsibilities of the Office of Financial and Insurance Regulation (OFIR) by requiring it to regulate all mortgage loan officers. This new regulatory program is overseen by an Advisory Board that is responsible for recommending to the Commissioner educational requirements, and other required rules for regulating this profession. These new responsibilities increase the administrative costs of OFIR, which are covered by the revenue generated through fees paid by registrants, the investigation, operating, or re-issuance fee, and any penalty revenue generated for noncompliance. This revenue is deposited into a restricted fund that is used to cover these additional costs. In addition, the Commissioner may assess a civil fine for noncompliance with the regulations included in these bills. The fine revenue is deposited into the General Fund. The Department of Energy, Labor, and Economic Growth estimates that \$3.5 million in new fee revenue will be raised through the implementation of these bills.

In addition, Senate Bills 827 and 833 will have an indeterminate fiscal impact on State and local corrections costs. There are no data to indicate how many offenders will be convicted of the existing offenses or of acting as a loan officer without registration. To the extent that increased convictions result, local governments will 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 shortens incarceration time, local governments will incur decreased costs of incarceration in local facilities, and State government will incur decreased costs of incarceration, at an average annual cost of $32,000. Additional penal fine revenue will benefit public libraries.

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