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BILL ANALYSIS

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Senate Bills 826 through 833 (as introduced 10-16-07)
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

Date Completed: 10-16-07

CONTENT

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

- Create the Mortgage Industry Advisory Board.
- Require the Board to review and make recommendations to the Commissioner of the Office of Financial and Insurance Services regarding courses provided to loan officers, course providers, 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.
- Reduce the minimum fee for amending or reissuing a license or registration.
- Require the Department of Treasury to create the "MBLSLA Fund", which would 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, and extend that

penalty to a person who acted as a loan officer without registration.
-- Extend administrative sanctions to loan officer registrants who violated the Act.

Senate Bill 827 would amend the Code of Criminal Procedure to delete a violation of the Mortgage Brokers, Lenders, and Servicers Licensing Act from the sentencing guidelines.

Senate Bills 826 and 828 through 833 are tie-barred to each other and to House Bills 5287 through 5291 (which would amend the same Act). Senate Bill 827 is tie-barred to Senate Bill 833.

(House Bill 5287 would prohibit a loan officer from receiving any compensation, commission, or other benefits 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 provide written notice to the Commissioner within 10 days of certain occurrences. House Bill 5290 would extend the Commissioner's control and supervision to loan officers employed in the State by mortgage brokers, mortgage

lenders, and mortgage 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 against whom the complaint was filed if the investigation of the complaint did not disclose evidence of a violation of the Act or a rule promulgated or an order issued under it.)

Senate Bill 826

The bill would create the Mortgage Industry Advisory Board. The Board would have to consist of the following individuals appointed by the Commissioner of the Office of Financial and Insurance Services (OFIS):

- Five individuals who were employees or directors of, or had at least a 25% ownership interest in licensees or registrants that were members of a trade association operating in the State that represented mortgage brokers, lenders, or servicers.
- Two individuals who were employees or directors of, or had at least a 25% ownership interest in business entities that provided services to or purchased services from licensees or registrants.

The trade associations could recommend candidates for the Board to the Commissioner.

The Board could not include more than one member who was employed by, was a director of, or had more than a 1% ownership interest in the same licensee, registrant, affiliate, or other person. The term of a Board member would be four years, except that for the first Board, the Commissioner would have to appoint three individuals for two-year terms so that the terms of office of Board members were staggered. An individual could not serve more than two consecutive four-year terms and the Commissioner could not reappoint an individual who served two consecutive four-year terms on the Board for at least 12 months after the end of those consecutive terms.

The Board would have to 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.
- If the Commissioner indicated that he or she was considering contracting with an outside contractor to process loan officer registration applications on behalf of the Commissioner, one contractor capable of providing that processing.
- Content and procedures for examinations given to loan officers.
- Procedures for enforcement of the Act.
- 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.

Senate Bill 828

The bill would add or change the definitions as described below.

The bill would define "board" as the Mortgage Industry Advisory Board.

"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. The term would not include an individual who performs clerical or administrative tasks for his or her employer if that individual does not solicit borrowers, accept applications, or negotiate the terms of the loans on the employer's behalf.

"Loan officer registrant" would mean an individual who met any of the following:

- He or she was registered under Section 2a (proposed by House Bill 5288).
- He or she filed an application under Section 2a within his or her first 90 calendar days of employment with a licensee or registrant and that application was pending.

-- He or she had been employed as a loan officer by a licensee or registrant for fewer than 91 calendar days.

"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.

Under the Act, "register" means filing a notice with the Commissioner on a form prescribed by the Commissioner that notifies the Commissioner 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 would apply to the activities of a loan officer.

"Registrant" means a person who is registered or required to be registered under the Act. Under the bill, the term would 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 persons, of the management or policies of a licensee or registrant. Under the bill, the term would include a director or executive officer of a registrant.

Senate Bill 829

Under the bill, a loan officer registration would be valid for one calendar year and terminate on December 31 unless it were renewed on or before that date. A loan officer registrant who was seeking renewal of his or her loan officer registration would have to submit a written application for renewal before December 1 of the year of his or her current registration. The applicant would have to include with the application the annual operating fee established in the Act.

The Commissioner would have to prescribe the form of application for renewal of loan officer registration. The application form would have to require that an applicant

provide at least all of the following information:

- The applicant's name and home address.
- The applicant's current registration number.
- If the applicant were employed at the time he or she applied for registration, the name and address of the principal office of his or her employer.
- A statement as to whether the applicant had had an application denied, or a license, registration, or similar authority revoked or suspended, 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.
- A statement that the applicant's loan officer registration was not subject to an order of suspension or revocation by the Commissioner.
- Any other information required by the Commissioner.

An applicant for loan officer registration who had a valid similar license or registration from another state that had a reciprocal agreement with the Commissioner concerning instruction requirements for loan officers could satisfy the fourth requirement by submitting proof that he or she was in compliance with the instructional requirements of that state at the time of application for loan officer registration.

Except as provided below, with every second annual renewal application beginning with the loan officer registrant's second annual renewal application, the applicant also would have to provide proof in the form of a certificate of completion or other evidence acceptable to the Commissioner that the applicant had in the immediately preceding two calendar years completed at least 12 hours of instruction in a course or courses relevant to the residential mortgage lending industry, the content of which had been approved by the Commissioner. The 12 hours would have to include at least three hours related to legal and regulatory compliance and at least two hours related to ethics and fraud prevention. All of the following would apply to the course or courses:

- A course that contained substantially similar subject matter to another course completed by the applicant in the two calendar years preceding the date of the applicant's last renewal of his or her loan officer registration that required proof of completion would not count toward the 12-hour requirement.
- A course could use a live instructor or be conducted by electronic means, including the internet, digital broadcast, or satellite network, which would have to include a method of confirming an applicant's attendance.
- The course would have to be provided by a person approved by the Commissioner.

An applicant for renewal of a loan officer registration would have to include with the application an affidavit from the loan officer registrant that disclosed any criminal conviction of or plea of no contest by the loan officer registrant occurring after one of the following, as applicable:

- If the renewal application were the 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 were the registrant's second or subsequent renewal application, the date of the most recent affidavit submitted.

The Commissioner could not renew the registration of any loan officer who had ever been convicted of, or pleaded no contest to, any felony involving embezzlement, forgery, fraud, a financial transaction, or securities.

If an individual applying for loan officer registration were not currently registered and had not renewed his or her loan officer registration for more than five consecutive calendar years, the individual would not be considered a renewal applicant and would have to apply for loan officer registration as a new applicant. If he or she had not renewed his or her loan officer registration for a period of fewer than five consecutive calendar years, the individual could apply for registration as a renewal applicant during that period.

Senate Bill 830

The bill 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 Commissioner must establish annually a schedule of fees sufficient to pay, but not to exceed OFIS's reasonably anticipated costs for administering the Act. The bill would refer to the costs of administering and enforcing 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, the fee also would apply to amending or reissuing a loan officer registration, and the minimum fee would be \$15.

The bill would delete 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 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 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 could not revert to the General Fund but would 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 surrenders the license or registration. The surrender, revocation, or suspension of a license or registration under the Act may not affect the licensee's or registrant's civil or criminal liability for acts committed prior to the surrender, revocation, or suspension. The surrender of a license or registration 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 surrenders the license or registration.

Under the bill, every reference to a licensee or registrant would include a reference to a loan officer registrant. Every reference to a license or registration would include a reference to a loan officer registration.

Senate Bill 832

The bill would prohibit 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 any felony involving embezzlement, forgery, fraud, a financial transaction, or securities.

A loan officer registrant also would be prohibited from 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.

In addition, the bill would prohibit a loan officer registrant from 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, as determined by the Commissioner, 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

The Act makes it a misdemeanor, punishable by a maximum fine of \$5,000, imprisonment for up to three years, or both, 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.

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.

Currently, 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 would apply to a loan officer registrant and to a person controlling a loan officer registrant.

Senate Bill 827

Currently, the sentencing guidelines in the Code of Criminal Procedure categorize 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. The bill would delete that provision.

MCL 445.1683 (S.B. 826)
777.14h (S.B. 827)
445.1651a (S.B. 828)
Proposed MCL 445.1652b (S.B. 829)
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 by requiring it to regulate all mortgage loan officers. This new regulatory program would be overseen by an Advisory Board that would be responsible for recommending to the Commissioner educational requirements, and other required rules for regulating this profession. 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 and 833 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 cost of \$31,000. Additional penal fine revenue would benefit public libraries.

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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.