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Senate Bill 1552 through 1555 (as enacted)
House Bill 6562 (as enacted)
Sponsor: Senator Cameron S. Brown (S.B. 1552)
Senator Alan Sanborn (S.B. 1553)
Senator Mark C. Jansen (S.B. 1554)
Senator Jim Barcia (S.B. 1555)
Representative Brian Calley (H.B. 6562)
Senate Committee: Banking and Financial Institutions
House Committee: Banking and Financial Services

PUBLIC ACT 325-328 of 2008
PUBLIC ACT 324 of 2008

Date Completed: 7-28-09

CONTENT

Senate Bill 1552 amended the Secondary Mortgage Loan Act to do the following:

- Prohibit an employee or agent of a licensee or registrant from performing services of a secondary mortgage loan officer unless he or she registers or otherwise complies with the requirements of the bill.
- Make an exception to the registration requirement for an individual who meets certain criteria.
- Require a licensee or registrant to conduct a criminal history check of an individual whom the licensee or registrant employs or engages as a secondary mortgage loan officer to originate secondary mortgage loans.
- Require the Commissioner of Financial and Insurance Regulation to approve or deny registration for secondary mortgage loan officer applicants, and assign other responsibilities to the Commissioner.
- Prohibit a broker, lender, or servicer from paying any compensation, commission, or other remuneration to a secondary mortgage loan officer who is not a secondary mortgage loan officer registrant, or to a secondary mortgage loan officer registrant who is not an employee or agent of that broker, lender, or servicer.

- Prohibit a secondary mortgage loan officer registrant from engaging in fraud and other activities.
- Prohibit and prescribe criminal penalties for certain activities.

Senate Bills 1553, 1554, and 1555 and House Bill 6562 amended the Mortgage Brokers, Lenders, and Servicers Licensing Act to do the following:

- Require fees for licenses and registrations under the Secondary Mortgage Loan Act to be credited to the MBLSLA Fund, and require money in the Fund to be used to administer and enforce the Secondary Mortgage Loan Act.
- Require a licensee or registrant that employs or engages an individual as a loan officer to originate mortgage loans, to conduct a criminal history check of that individual.
- Extend to March 31, 2009, the date until which a residential mortgage originator was prohibited from receiving any compensation, commission, or fee from a mortgage broker, lender, or servicer other than the employer of the residential mortgage originator; and delay until April 1, 2009, the date on which similar prohibitions began to apply to loan officers.

-- Require the Mortgage Industry Advisory Board to review and make recommendations concerning exams and courses, procedures to verify attendance at electronic courses, and confidentiality of personal identifying information for loan officers and applicants under the Secondary Mortgage Loan Act.

All of the bills were tie-barred to each other and took effect on December 18, 2008.

Senate Bill 1552

License or Registration Requirement

Under the Secondary Mortgage Loan Act, a person may not act as a broker, lender, or servicer without first obtaining a license or registering under the Act, unless one or more exceptions apply. The bill refers to registering under Section 3a (which requires certain people to register as brokers, lenders, or servicers).

Previously, licensure or registration was not required if the person was solely performing services as an employee of only one broker, lender, or servicer. Under the bill, instead, licensure or registration is not required if the person is providing secondary mortgage loan officer services as an employee or agent of only one broker, lender, or servicer and is registered as a secondary mortgage loan officer registrant if that registration is required under the Act.

The Act made another exception for a person who was an exclusive broker. Under the bill, this applied until March 31, 2009.

Also, as previously provided, registration or licensure is not required if one or more of the following apply:

- The person is licensed under the Consumer Financial Services Act.
- The person acts as a lender but makes or negotiates two or fewer secondary mortgage loans in a calendar year.
- The person acts as a servicer but services 10 or fewer secondary mortgage loans in a calendar year.
- The person is an individual and an employee of a professional employer organization, solely acting as a secondary mortgage loan originator of only one broker or lender.

Under the bill, beginning April 1, 2009, an employee or agent of a licensee or registrant, other than an individual who may perform services of a secondary mortgage loan officer without registering, as described below, may not perform services of a secondary mortgage loan officer unless he or she registers or otherwise complies with provisions of the bill that require criminal history checks, prescribe registration application requirements (including classroom instruction and testing), and allow a person to perform services as a secondary mortgage loan officer while his or her application is pending.

Beginning April 1, 2009, an individual may perform services of a secondary mortgage loan officer without registering under or otherwise complying with those provisions if he or she is an employee or agent of a broker, lender, or servicer that is also a mortgage broker, mortgage lender, or mortgage servicer under the Mortgage Brokers, Lenders, and Servicers Licensing Act or the individual is registered as a loan officer under that Act. The individual will be considered a secondary mortgage loan officer registrant for purposes of the Secondary Mortgage Loan Act.

The bill defines "secondary mortgage loan officer" as an individual who is an employee or agent of a broker, lender, or servicer; who originates secondary mortgage loans; and who is not an employee of a depository financial institution or a subsidiary or affiliate of a depository financial institution. "Secondary mortgage loan officer registrant" means an individual who either is currently registered (under sections the bill added) or is not required to register to perform services of a secondary mortgage loan officer (as described above). "Originate" means to negotiate, arrange, or offer to negotiate or arrange a secondary mortgage loan between a lender and one or more individuals, or to place, assist in placing, or find a secondary mortgage loan for one or more individuals.

The Act previously defined "registrant" as a person that is registered or required to be registered under the Act, not including a depository institution. Under the bill, "registrant" means a person that is registered or required to register as a broker, lender, or servicer under the Act; the term does not include a secondary

mortgage loan officer registrant or depository institution.

Registration Procedures

Under the bill, beginning April 1, 2009, if an individual, other than one who may perform services of a secondary mortgage loan officer without registering, is employed or engaged as an agent to originate secondary mortgage loans by a licensee or registrant, that individual must apply for secondary mortgage 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 the Act.

The Commissioner must prescribe the application form. Unless the Commissioner waives application, as described below, the form must require that an applicant provide at least all of the following to the Commissioner:

- The name and home address of the applicant.
- 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 broker, lender, or servicer in which the applicant held more than 25% of the ownership interest or as a secondary mortgage loan officer.
- Except for someone the Commissioner must register (as described below), 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 was 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 tested an applicant's knowledge of the contents of the introductory course in residential mortgage lending.

- The results of the criminal history check.
- The signature of the applicant, and his or her declaration that the information and statements made in or included with the application are true, accurate, and complete.
- The signature of an executive officer on behalf of the licensee or registrant that employs or offers to employ the applicant, or engages or offers to engage him or her as an agent, and the officer's certification on behalf of the licensee or registrant, made under penalties of perjury, that the information and statements in or included with the application are true, accurate, and complete to the best of his or her knowledge and belief.
- Any other information required by the Commissioner.

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

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

- The licensee or registrant that is the applicant's employer or principal has completed the criminal history check of the applicant and submitted its results to the Commissioner.
- The criminal history 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 another felony within the 10-year period preceding the date of the application.
- The licensee or registrant has given the Commissioner written notice that the applicant is beginning to provide services as a secondary mortgage 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 another felony within the 10-year period preceding the date of the application.
- An applicant against whom the Commissioner has issued a prohibition order for engaging in fraud.
- An applicant for whom the Commissioner has not received the results of the criminal history check.
- An individual who may perform services of a secondary mortgage loan officer without registering.

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

- For the five-year period immediately preceding December 18, 2008, he or she was employed or engaged as a secondary mortgage loan officer for at least four and a half years by one or more licensees, registrants, or nonprofit corporations or depository financial institutions exempt from the Act.
- He or she was not the subject of any prohibition orders for engaging in fraud issued by the Commissioner in the five-year period immediately preceding December 18, 2008.
- Before April 1, 2009, he or she took the examination described above and correctly answered at least 75% of the questions.
- He or she submitted an application before April 1, 2009 (although the applicant was not required to complete or submit proof of completion of the instruction described above).
- He or she is not an applicant to whom the Commissioner may not issue a registration.

The Commissioner may waive any of the requirements for a secondary mortgage loan officer registration if the applicant has a valid similar license or registration from another state that has a reciprocal agreement with the Commissioner, except for applicants who have been convicted of a felony or misdemeanor or who have not had a criminal history check.

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

Restrictions

Under the bill, the following provisions apply beginning April 1, 2009.

An individual employed or engaged as an agent by a licensee or registrant as a secondary mortgage loan officer may not use the title or designation "loan officer", "loan originator", "mortgage loan officer", "mortgage loan originator", "secondary mortgage loan officer", or "secondary mortgage loan originator" if he or she is not a secondary mortgage loan officer registrant. A secondary mortgage loan officer registrant and the employer or principal of a secondary mortgage 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 Act's registration requirements unless the Office of Financial and Insurance Regulation (OFIR) approves use of that word.

A secondary mortgage loan officer may not directly or indirectly receive any compensation, commission, fee, points, or other remuneration or benefits for originating a secondary mortgage loan unless both of the following are met:

- He or she is a secondary mortgage loan officer registrant or is an individual who may perform services of a secondary mortgage loan officer without registering.
- The compensation, commission, fee, points, or other remuneration or benefits are paid by the licensee or registrant for which the secondary mortgage loan officer originated that secondary mortgage loan.

A broker, lender, or servicer may not directly or indirectly pay any compensation, commission, fee, points, or other

remuneration or benefits to a secondary mortgage loan officer who is not a secondary mortgage loan officer registrant or to a secondary mortgage loan officer registrant who is not an employee or agent of that broker, lender, or servicer.

Registration Renewal

The bill provides that a secondary mortgage loan officer registration is valid for one calendar year and terminates on December 31 unless it is renewed on or before that date.

To renew the secondary mortgage loan officer registrations of any employees or agents of a licensee or registrant, the licensee or registrant must submit an application for renewal before December 1 of the year of the current registrations. The licensee or registrant must include with the application the annual operating fee established in the Act for each secondary mortgage loan officer registrant included in the application.

The Commissioner must prescribe the form of the renewal application and the process for submitting an application. The application form must require that an applicant provide at least all of the following information about each secondary mortgage loan officer registrant included in the application:

- The applicant's name, address, and current license or registration number.
- The name, home address, and current registration number of the secondary mortgage loan officer registrant.
- A statement as to whether the 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 broker, lender, or servicer in which the registrant held more than 25% of the ownership interest or as a secondary mortgage loan officer.
- Except as otherwise provided, proof acceptable to the Commissioner that the registrant has 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 has been approved by the Commissioner.

- Any other information required by the Commissioner.

The six hours of instruction must include at least one and a half hours related to legal and regulatory compliance and at least one hour related to ethics and fraud prevention. A course may use a live instructor or be conducted by electronic means, including the internet, digital broadcast, or satellite network. A course conducted by electronic means must include a method of confirming a registrant's completion of the course. The course must be provided by a person approved by the Commissioner.

Before a licensee or registrant applies to renew the registration of a secondary mortgage loan officer registrant, he or she must give to the licensee or registrant an affidavit that discloses any criminal conviction of or plea of no contest by the secondary mortgage loan officer registrant occurring between one of the following, as applicable, and the date of the affidavit:

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

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

If an individual included in a renewal application is not currently registered and his or her secondary mortgage loan officer registration has not been renewed for more than five consecutive calendar years, the individual must apply for a registration as a new applicant. The applicant may include in a renewal application a request to renew the registration for a secondary mortgage loan officer registrant who is not currently registered if his or her registration has not

been renewed for less than five consecutive years.

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

Required Notices

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

- 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 a felony.

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

Criminal History Check

Under the bill, after March 31, 2009, a licensee or registrant must conduct a criminal history check of an individual whom the licensee or registrant employs or offers to employ, or engages or offers to engage as an agent, as a secondary mortgage loan officer to originate secondary mortgage loans.

The Department of State Police and the Federal Bureau of Investigation must perform the criminal history check. The

individual subject to the criminal history check must have his or her fingerprints taken by a law enforcement agency or by another person that the Commissioner determines is qualified to take fingerprints; pay the agency or person the fees required by the State Police, and by the FBI, for processing fingerprints and completing a criminal history check; and request that the agency or person forward to the State Police the fingerprints, a request for a criminal history check of the individual in the format and as prescribed by the State Police, and the fees.

The State Police must forward the fingerprints and appropriate fee to the FBI for a national criminal history check. After receiving a proper request and the required fees, the State Police must conduct the criminal history check and give the licensee or registrant the results, which must contain any criminal history record information concerning the individual maintained by the State Police and the results of the FBI's criminal history check. The licensee or registrant must submit the results to the Commissioner with the application for secondary mortgage loan officer registration.

If a criminal arrest fingerprint card is subsequently submitted to the State Police and matches against a fingerprint that was submitted and stored by the State Police in its Automated Fingerprint Identification System (AFIS) database, the State Police must notify the Commissioner.

Proof of Financial Responsibility

Under the Act, except as otherwise provided, at the time of filing an application for a license or registration or renewal of a license or registration, an applicant must provide proof of financial responsibility in the following amounts:

- For a license or registration to act as a broker who receives funds from a prospective borrower before the closing of the secondary mortgage loan or who acts as a lender, \$25,000.
- For a license or registration to act as a servicer, \$125,000.

The bill retained this requirement.

Previously, in each case, the proof of financial responsibility also had to include an additional \$20,000 for each exclusive broker through which the applicant conducted business regulated by the Act, not to exceed \$1.0 million.

Also, a licensee or registrant that conducted business regulated by the Act through one or more exclusive brokers had to enter into an indemnification agreement to protect borrowers from monetary damages that could result from doing business with the exclusive brokers through which the licensee or registrant conducted business.

Under the bill, these requirements applied until March 31, 2009.

Schedule of Fees

The Act requires the Commissioner annually to establish a schedule of fees sufficient to pay, but not to exceed, OFIR's reasonably anticipated costs of administering the Act (as well as enforcing it, under the bill).

Previously, the fee for amending or reissuing a license or registration was a minimum of \$50 and a maximum of \$200. Under the bill, for amending or reissuing a license, registration, or secondary mortgage loan officer registration, the minimum fee is \$15 and the maximum is \$200.

The fee schedule also must include an annual operating fee based upon the number of secondary mortgage loans a licensee or registrant brokered to other parties that were closed during the previous calendar year, the number of secondary mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of secondary mortgage loans serviced by the licensee or registrant as of December 31 of the previous year.

In addition, under the bill, the fee schedule must include an annual fee from or on behalf of each secondary mortgage loan officer registrant in an amount sufficient to defray the estimated cost of administering and enforcing the Act's secondary mortgage loan officer registration provisions. This fee does not apply to a secondary mortgage loan officer registrant who is an individual who may perform services of a secondary mortgage loan officer without registering.

Previously, money received under the Act had to be deposited in the State Treasury and credited to the Financial Institutions Bureau (now within OFIR) to be used only for its operation. Under the bill, money received from the fees must be deposited in the MBLSLA Fund (described in Senate Bill 1553).

Responsibilities of the Commissioner

The Act requires the Commissioner to exercise general supervision and control over brokers, lenders, and servicers doing business in this State and authorizes the Commissioner, among other things, to deny an application for a license or registration; advise the Attorney General or the prosecuting attorney of the county in which the Commissioner believes a person is violating the Act; suspend, revoke, or refuse to issue a license or registration; and censure a licensee or registrant. Under the bill, these provisions also apply to secondary mortgage loan officer registrants and registrations.

The bill also refers to secondary mortgage loan officer registrants and registrations in provisions that require the Commissioner to give a notice to a licensee or registrant of the Commissioner's intention to enter an order to suspend or revoke or refuse to issue a license or registration; and allow a licensee, registrant, or applicant to request a hearing to contest the intention to enter such an order.

Prohibited Actions

Under the bill, a secondary mortgage loan officer registrant may not do any of the following:

- Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by the Act.
- Intentionally, or due to gross or wanton negligence, repeatedly fail to provide borrowers with any material disclosures of information required by law.
- Directly or indirectly make a false, misleading, or deceptive advertisement regarding secondary mortgage loans or their availability.
- Suppress or withhold from the Commissioner any information that the officer possesses and that, if submitted, would have made him or her ineligible for

registration or renewal at the time of application and allowed the Commissioner to refuse to register the officer.

- Be convicted of, or plead no contest to, a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or a felony.
- Refuse or fail to furnish any information or make any report required by the Commissioner to issue or renew a registration, or otherwise required by him or her, within a reasonable period of time, as determined by the Commissioner, after requested by him or her.

Penalties

Previously, a person, association, nonprofit corporation, common law trust, joint stock company, limited liability company, or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or representative of any of them, that willfully or intentionally engaged in this State in the business of making secondary mortgage loans without a license as required under the Act, was guilty of a misdemeanor punishable by a maximum fine of \$5,000, imprisonment for up to three years, or both.

Under the bill, any of those people or entities who willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a maximum fine of \$15,000, imprisonment for up to one year, or both:

- Engages in this State in the business of a broker, lender, or servicer without a license or registration required under the Act.
- Acts as a secondary mortgage loan officer in this State without a secondary mortgage loan officer registration required under the Act.
- Coerces or induces a real estate appraiser to inflate the value of real property used as collateral for a secondary mortgage loan, including by representing or implying that a real estate appraiser will not be selected to conduct an appraisal of the real property, selected for future appraisal work, or paid for an appraisal unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

A person who violates the Act or directly or indirectly counsels, aids, or abets in a violation is liable for a civil fine in addition to other penalties and forfeitures imposed by the Act. Previously, the maximum fine was \$1,000 for each offense. Under the bill, the civil fine may not be more than \$3,000 for each violation, subject to a maximum total of \$30,000 for a transaction resulting in more than one violation, plus the costs of investigation.

Other Provisions

The Act allows a person to renew a registration or license by filing an application and paying an annual operating fee for the succeeding year. Previously, the Commissioner had to receive the application and payment by December 15 of each year. Under the bill, the application and payment must be received by a date prescribed by the Commissioner.

The bill refers to secondary mortgage registrants and registrations in provisions that allow a licensee or registrant to surrender a license or registration; allow a licensee or registrant to request a new license or registration certificate upon the loss or destruction of a certificate; and prohibit a licensee or registrant from making or offering to make a secondary mortgage loan except on the terms and conditions authorized by the Act and rules promulgated under it.

Under the Act, a licensee or registrant may not, directly or indirectly, assess charges and fees in connection with making a secondary mortgage loan, except for specific charges listed in the Act. These include reasonable and necessary charges that are the actual expenses incurred by the licensee or registrant in connection with making, closing, disbursing, extending, readjusting, or renewing a secondary mortgage loan. Previously, this also applied to actual expenses incurred by an exclusive broker of the licensee or registrant.

Senate Bill 1553

Under the Mortgage Brokers, Lenders, and Servicers Licensing Act, the Department of Treasury administers 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 must use the account to provide money to the Commissioner to administer and enforce the Act and to pay other costs associated with the Commissioner's regulatory obligations.

Under the bill, fees described in Section 6a of the Secondary Mortgage Loan Act (for licenses and registrations) also must be credited to the Fund, and money in the Fund also must be used to administer and enforce that Act.

Senate Bill 1554

Registration

Public Act 60 of 2008 amended the Mortgage Brokers, Lenders, and Servicers Licensing Act to prohibit an employee or agent of a licensee or registrant from performing services of a loan officer unless he or she registers or otherwise complies with Section 2a of the Act, which requires criminal records checks and prescribes registration procedures and criteria. Originally, these provisions were to apply beginning January 1, 2009. Under the bill, these provisions apply beginning April 1, 2009.

As amended by Public Act 60, the Act requires the Commissioner to register a person as a loan officer if he or she was employed or engaged as a loan officer for at least four and a half years by a licensee, registrant, or person exempt from the Act during the five-year period immediately preceding the effective date of Public Act 60 (April 3, 2008). The person also must take an examination and correctly answer at least 75% of the questions, and submit an application. Originally, the person had to take an exam and submit an application within eight months after the effective date of Public Act 60. Under the bill, the person had to do so before April 1, 2009.

Previously, an employee or agent of a mortgage broker, mortgage lender, or mortgage servicer that was exempt from licensure or registration under the Act could apply to be a loan officer registrant. The bill deleted this provision.

Criminal History Check

Previously, a licensee or registrant that employed or offered to employ, or engaged or offered to engage as an agent, an individual to originate mortgage loans was required to conduct a criminal records check of that individual and submit its results to the Commissioner. A criminal records check had to 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. The bill deleted these requirements.

Under the bill, a licensee or registrant that employs or offers to employ, or engages or offers to engage as an agent, an individual as a loan officer to originate mortgage loans after March 31, 2009, must conduct a criminal history check of that individual. The State Police and the FBI must perform the criminal history check. The individual must have his or her fingerprints taken by a law enforcement agency or by another person that the Commissioner determines is qualified to take fingerprints; pay the agency or person the fees required by the State Police and by the FBI, for processing fingerprints and completing a criminal history check; and request that the agency or person forward the fingerprints, a request for a criminal history check of the individual in the format and as prescribed by State Police, and the fees to the State Police.

The State Police must forward the fingerprints and appropriate fee to the FBI for a national criminal history check. After receiving a proper request and the required fees, the State Police must conduct the criminal history check and provide its results to the licensee or registrant. The results must contain any criminal history record information concerning the individual maintained by the State Police and the results of the FBI's criminal history check.

The licensee or registrant must submit the results of the criminal history check to the Commissioner with the application for loan officer registration.

If a criminal arrest fingerprint card is subsequently submitted to the State Police and matches against a fingerprint that was submitted and stored by State Police in its

AFIS database, the State Police must notify the Commissioner.

Application

Under the Act, the Commissioner must prescribe the form of application for registration as a loan officer. The form must require an applicant to give the Commissioner certain information, including a statement of past convictions and the name and address of the applicant.

Under the bill, the application also must include the signature of the applicant and his or her declaration that the information and statements made in or included with the application are true, accurate, and complete. In addition, the application must contain the signature of an officer on behalf of the licensee or registrant that employs or offers to employ the applicant, or engages or offers to engage him or her as an agent, and the executive officer's declaration on behalf of the licensee or registrant that the information and statements in or included with the application are true, accurate, and complete to the best of his or her knowledge and belief.

Senate Bill 1555

Under the Mortgage Brokers, Lenders, and Servicers Licensing Act, a person may not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the Act unless he or she meets one or more of the conditions described in the Act. Previously, until December 31, 2008, a license was not required if the person was solely performing services as an employee of only one mortgage broker, lender, or servicer. Under the bill, a license is not required if the person is providing loan officer services as an employee or agent of only one mortgage broker, lender, or servicer, and is registered as a loan officer registrant if that registration is required under the Act.

Unless a residential mortgage originator 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. A

mortgage broker, lender, or servicer also was prohibited from paying a mortgage originator other than an employee. Previously, these provisions did not apply after December 31, 2008. The bill extended the provisions until March 31, 2009.

The Act prohibits a loan officer from directly or indirectly receiving any compensation, commission, fee, points, or other remuneration or benefits for originating a mortgage loan unless the loan officer is a loan officer registrant, and 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. (A mortgage broker, lender, or servicer may not pay a loan officer who does not meet these requirements.) Originally, these provisions were to begin on January 1, 2009. Under the bill, these provisions began on April 1, 2009.

House Bill 6562

Under the Mortgage Brokers, Lenders, and Servicers Licensing Act, the Mortgage industry Advisory Board must communicate to the Commissioner of Financial and Insurance Regulation 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 under the Act.
- Content and procedures for examinations given to loan officers under the Act.
- Rules proposed under the Act.
- Procedures to verify attendance at and participation in courses conducted electronically under the Act.
- Any other issue referred to the Board by the Commissioner.

Under the bill, the Board also must review and make recommendations on the same matters for loan officers and applicants under the Secondary Mortgage Loan Act, and on rules proposed under that Act.

Previously, the Board was required to review and make recommendations concerning procedures for maintaining the confidentiality of personal identifying

information and other information concerning licensees, registrants, and applicants for licensure or registration. The bill, instead, requires the Board to review and make recommendations concerning procedures for maintaining the confidentiality of personal identifying information and other information concerning all of the following:

- Licensees, registrants, and loan officer registrants.
- Applicants for licensure, registration, or loan officer registration.
- Licensees, registrants, and secondary mortgage loan officer registrants under the Secondary Mortgage Loan Act.
- Applicants for licensure, registration, or secondary mortgage loan officer registration under the Secondary Mortgage Loan Act.

MCL 493.51 et al. (S.B. 1552)
445.1658 (S.B. 1553)
445.1652a (S.B. 1554)
445.1652 (S.B. 1555)
445.1683 (H.B. 6562)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1552

The bill requires applicants for a secondary mortgage loan officer license to submit to a criminal history check by having fingerprints taken and submitted to the Department of State Police for State and Federal analysis, at a cost of \$49.25 (actual cost), to be borne by the applicant.

The bill will have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders will be convicted of the new offenses. To the extent that the bill increases convictions for making secondary mortgage loans without a registration or secondary mortgage loan officer registration, local governments will incur increased costs of incarceration in local facilities, which vary by county. To the extent that the reduction in the maximum incarceration time decreases incarceration time, local governments will incur decreased costs of incarceration in local facilities. Increased penal fine revenue will benefit public libraries.

Senate Bill 1553

The bill redirects revenue collected under the Secondary Mortgage Loan Act from the Consumer Finance Fees Account to the MBLSLA Fund, created in January 2008, in order to consolidate all the revenue sources dedicated for the administration of the licensing and registration program for mortgage brokers, lenders, and servicers. The fees for 2009 were set as follows: broker registration, \$450; lender or lender/broker, \$600; servicer, servicer/broker, servicer/lender, or servicer/broker/lender, \$750; and amendment to a license, \$50.

Senate Bill 1554

The bill requires those who apply for a license to originate mortgage loans to submit to a criminal history check by having fingerprints taken and submitted to the Department of State Police for State and Federal analysis, as a cost of \$49.25 (actual cost), to be borne by the applicant.

The three-month extension in implementation of the loan officer registration allowed time for criminal background checks to be completed and filed and had no fiscal impact on the Office of Financial and Insurance Regulation.

Senate Bill 1555

The bill extended the implementation date of the registration program to give the Department of Energy, Labor, and Economic Growth adequate time to meet the statutory requirements of registering the affected individuals.

House Bill 6562

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

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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.