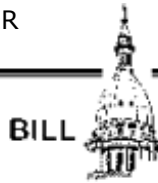




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BILL ANALYSIS

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Senate Bills 1552 through 1555 (as introduced 11-5-08)

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)

Committee: Banking and Financial Institutions

Date Completed: 11-13-08

CONTENT

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

- Beginning April 1, 2009, prohibit an employee or agent of a licensee or registrant, other than an individual who could perform services of a secondary mortgage loan officer without registering, from performing services of a secondary mortgage loan officer unless he or she registered or otherwise complied with the requirements of the bill.
- Require a licensee or registrant to conduct a criminal history check of an individual whom the licensee or registrant employed or offered to employ, or engaged or offered to engage as an agent, an individual as a secondary mortgage loan officer to originate secondary mortgage loans.
- Assign responsibilities to the Commissioner of Financial and Insurance Regulation, including approving or denying registration for secondary mortgage loan officer applicants.
- Prohibit a broker, lender, or servicer from paying any compensation, commission, fee, points, or other remuneration or benefits to a secondary mortgage loan officer who was not a secondary mortgage loan officer registrant, or to a secondary mortgage loan officer registrant who

was 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.
- Revise the criminal penalty for making secondary mortgage loans without a license, and extend it to acting without a registration.

Senate Bills 1553, 1554, and 1555 would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to do the following:

- Require fees for licenses and registrations described in the Secondary Mortgage Loan Act to be credited to the MBLSA 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 employed or offered to employ, or engaged or offered to engage as an agent, an individual as a loan officer to originate mortgage loans, to conduct a criminal history check of that individual.
- Extend past 2008 a provision allowing a person to act as a mortgage broker, lender, or servicer without a license if he or she is performing services as an employee of only one broker, lender, or servicer.

-- Extend to March 31, 2009, from December 31, 2008, the date until which a residential mortgage originator is 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 a mortgage broker, lender, or servicer is prohibited from paying a mortgage originator other than an employee.

The bills are tie-barred to each other and described in detail below.

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 of the following apply:

- The person is solely performing services as an employee of only one broker, lender, or servicer.
- The person is an exclusive broker.
- 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, a person could not act as a broker, lender, or servicer without first obtaining a license under the Act or registering under Section 3a (which requires certain people to register as brokers, lenders, or servicers), unless the person was providing secondary mortgage loan officer services as an employee or agent of only one broker, lender, or servicer and was registered as a secondary mortgage loan officer registrant if that registration were required under the Act, or unless any of the other provisions listed above applied. After March 31, 2009, the exception for a person

who is an exclusive broker would no longer apply.

Beginning April 1, 2009, an employee or agent of a licensee or registrant, other than an individual who could perform services of a secondary mortgage loan officer without registering, as described below, could not perform services of a secondary mortgage loan officer unless he or she registered or otherwise complied with the requirements of the bill.

An individual could perform services of a secondary mortgage loan officer without registering under or otherwise complying with the bill if he or she were an employee or agent of a broker, lender, or servicer that was also a mortgage broker, mortgage lender, or mortgage servicer or was registered as a loan officer under the Mortgage Brokers, Lenders, and Servicers Licensing Act. The individual would be considered a secondary mortgage loan officer registrant for purposes of the Secondary Mortgage Loan Act.

The bill would define "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 or agent of a depository financial institution or a subsidiary or affiliate of a depository financial institution. "Secondary mortgage loan officer registrant" would mean either an individual who is currently registered (under sections the bill would add) or who is not required to register to perform services of a secondary mortgage loan officer (as described below). "Originate" would mean 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 defines "registrant" as a person that is registered or required to be registered under the Act, not including a depository institution. Under the bill, "registrant" would mean a person that is registered or required to register as a broker, lender, or servicer under the Act; the term would not include a secondary mortgage loan officer registrant or depository institution.

Registration Procedures

Beginning April 1, 2009, if an individual, other than one who could perform services of a secondary mortgage loan officer without registering, were employed or engaged as an agent to originate secondary mortgage loans by a licensee or registrant, that individual would have to apply for secondary mortgage loan officer registration within 90 days after he or she began providing services as an employee or agent of the licensee or registrant, by submitting the application, in writing, and including with the application the annual operating fee established under the Act.

The Commissioner would have to prescribe the form of application for registration as a secondary mortgage loan officer. Unless the Commissioner waived application, as described below, the form would have to 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 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 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 would have to register (as described below), proof in the form of a certificate of completion or other evidence acceptable to the Commissioner that the applicant had 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, made under penalties of perjury, that the information and statements made in or included with the application were true, accurate, and complete.
- The signature of an officer on behalf of the licensee or registrant that employed or offered to employ, or engaged or offered to engage as an agent, the applicant, and the officer's declaration on behalf of the licensee or registrant, made under penalties of perjury, that the information and statements in or included with the application were 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 would have to include at least three hours of live classroom instruction concerning State and Federal laws and regulations governing residential mortgage lending, whose content had been approved by the Commissioner.

An applicant for secondary mortgage loan officer registration could perform services as a secondary mortgage loan officer while his or her application was pending if all of the following were met:

- The licensee or registrant that was the employer or principal of the applicant had completed the criminal history check of the applicant and submitted its results to the Commissioner.
- The criminal history check did not disclose that the applicant had 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 that was the employer or principal of the applicant had provided the Commissioner with written notice that the applicant was beginning to provide services as a secondary mortgage loan officer for the licensee or registrant.

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

- An applicant who had 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 had issued a prohibition order for engaging in fraud.
- An applicant for whom the Commissioner had not received the results of the criminal history check.
- An individual who could perform services of a secondary mortgage loan officer without registering.

The Commissioner would have to register a secondary mortgage loan officer who met 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 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 the bill's effective date.
- Within eight months after the bill's effective date, he or she took the examination described above and correctly answered at least 75% of the questions.
- He or she submitted an application within eight months after the bill's effective date (although the applicant would not be required to complete or submit proof of completion of the instruction described above).
- He or she was not an applicant to whom the Commissioner could not issue a registration.

The Commissioner could waive any of the requirements for a secondary mortgage loan officer registration if the applicant had a valid similar license or registration from another state that had a reciprocal agreement with the Commissioner, except for applicants who had been convicted of a

felony or misdemeanor or who had not had a criminal history check.

The Commissioner could disclose, provide, or make available to the public the names, business addresses, and business telephone numbers of secondary mortgage loan officer registrants. The Commissioner could 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

The following provisions would apply beginning April 1, 2009.

An individual employed or engaged as an agent by a licensee or registrant as a secondary mortgage loan officer could 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 were 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 could 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 had met the Act's registration requirements unless the Office of Financial and Insurance Regulation (OFIR) approved use of that word.

A secondary mortgage loan officer could 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 were met:

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

A broker, lender, or servicer could not directly or indirectly pay any compensation, commission, fee, points, or other remuneration or benefits to a secondary mortgage loan officer who was not a secondary mortgage loan officer registrant or to a secondary mortgage loan officer registrant who was not an employee or agent of that broker, lender, or servicer. "Employee" would mean that term as 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 those entities. The term also includes an officer of a corporation.)

Registration Renewal

A secondary mortgage loan officer registration would valid for one calendar year and terminate on December 31 unless it was 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 would have to submit an application for renewal before December 1 of the year of the current secondary mortgage loan officer registrations. The licensee or registrant would have to include with the application the annual operating fee established in the bill for each secondary mortgage loan officer registrant included in the application.

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

- The name, address, and current license or registration number of the applicant.
- The name and home address of the secondary mortgage loan officer registrant.
- The current registration number of the registrant.
- A statement as to whether the registrant 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 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 had in the immediately preceding calendar year completed at least six hours of instruction in a course or courses relevant to the residential mortgage lending industry, whose content had been approved by the Commissioner.
- Any other information required by the Commissioner.

The six hours of instruction would have to 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 could use a live instructor or be conducted by electronic means, including the internet, digital broadcast, or satellite network. A course conducted by electronic means would have to include a method of confirming a registrant's completion of the course. The course would have to be provided by a person approved by the Commissioner.

Before a licensee or registrant applied to renew a secondary mortgage loan officer registrant's registration, the registrant would have to give to the licensee or registrant an affidavit that disclosed any criminal conviction of or plea of no contest by the registrant occurring between one of the following, as applicable, and the date of the affidavit:

- If the application were 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 were for the registrant's second or subsequent renewal, the date of the most recent affidavit the registrant provided to the licensee or registrant.

The Commissioner could not renew the registration of any secondary mortgage loan officer who had 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 were not currently registered and his or her secondary mortgage loan officer registration had not been renewed for a period of more than five consecutive calendar years, the individual would have to apply for a secondary mortgage loan officer registration as a new applicant. The applicant could include in a renewal application a request to renew the registration for a secondary mortgage loan officer registrant who was not currently registered if his or her secondary mortgage loan officer registration had not been renewed for less than five consecutive years.

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

Required Notices

A secondary mortgage loan officer registrant would have to provide written notice to the Commissioner within 10 days after any of the following occurred:

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

A licensee or registrant would have provide 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

Beginning April 1, 2009, a licensee or registrant that employed or offered to employ, or engaged or offered to engage as an agent, an individual as a secondary mortgage loan officer to originate secondary mortgage loans would have to conduct a criminal history check of that individual.

All of the following apply to the criminal history check:

- The Department of State Police and the Federal Bureau of Investigation would have to perform the criminal history check.
- The individual subject to the criminal history check would have to have his or her fingerprints taken by a law enforcement agency or by another person that the Commissioner determined was 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 the State Police, and the fees to the State Police.
- The State Police would have to 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 would have to conduct the criminal history check and give the licensee or registrant the results, which would have to 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 would have to submit the results to the Commissioner with the application for secondary mortgage loan officer registration.

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 and an additional \$20,000 for each exclusive broker through which the applicant conducts business regulated by the Act, not to exceed \$1.0 million.
- For a license or registration to act as a servicer, \$125,000 and an additional \$20,000 for each exclusive broker through which the applicant conducts business regulated by the Act, not to exceed \$1.0 million

An applicant also must provide proof of financial responsibility by either a corporate surety bond or an irrevocable letter of credit.

Under the bill, the requirement that an applicant pay an additional \$20,000 for each exclusive broker through which the applicant conducted business would not apply after March 31, 2009.

Currently, a licensee or registrant that conducts business regulated by the Act through one or more exclusive brokers must enter into an indemnification agreement, subject to the approval of the Commissioner, to protect borrowers from monetary damages that may result from doing business with the exclusive brokers through which the licensee or registrant conducts business regulated by the Act. Under the bill, this provision would not apply after March 31, 2009.

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

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. The fee schedule is as follows:

- For the investigation of an applicant for a license, a minimum of \$400 and a maximum of \$1,000.
- An annual operating fee based upon the number of secondary mortgage loans the 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 calendar year, based upon information in certain reports filed under the Act.
- For amending or reissuing a license or registration, a minimum of \$50 and a maximum of \$200.

Under the bill, the fees would have to be sufficient to pay OFIR's reasonably anticipated costs for enforcing as well as administering the Act. For amending or reissuing a license, registration, or secondary mortgage loan officer registration, the Commissioner could establish a minimum fee of \$15 and a maximum fee of \$200.

The Commissioner also could establish 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 secondary mortgage loan officer registration provisions of the Act. The fee would not apply to a secondary mortgage loan officer registrant who was an individual who could perform services of a secondary mortgage loan officer without registering.

Currently, money received under the Act must be deposited in the State Treasury and credited to the Financial Institutions Bureau to be used only for its operation. Under the bill, money received from the fees would have to be deposited in the MBLSA Fund (described in Senate Bill 1553).

Responsibilities of the Commissioner

Under the Act, the Commissioner must exercise general supervision and control over brokers, lenders, and servicers doing business in this State and, among other things, may 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 would apply to secondary mortgage loan officer registrants and registrations.

The bill also would refer 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; allow a licensee, registrant, or applicant to request a hearing to contest the intention to enter an order or refusal; 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.

Prohibited Actions

Under the bill, a secondary mortgage loan officer registrant could 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 possessed and that, if submitted, would have made him or her ineligible for

registration or renewal of his or her secondary mortgage loan officer registration at the time of application and would have 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 secondary mortgage loan officer registration, or otherwise required by him or her, within a reasonable period of time, as determined and after requested by the Commissioner.

Charges & Fees

Under the Act, charges and fees may not be assessed, directly or indirectly by a licensee or registrant, in connection with the making of a secondary mortgage loan, except for any of the following, which may be included in the principal of the loan:

- Charges for credit life insurance or credit accident and health insurance as defined in the Credit Insurance Act, or any other insurance under the Insurance Code, that is offered by the licensee or registrant and that may be purchased at the option of the borrower.
- Reasonable and necessary charges that are the actual expenses incurred by the licensee, registrant, or exclusive broker in connection with the making, closing, disbursing, extending, readjusting, or renewing of a secondary mortgage loan.
- A nonrefundable processing fee that is not more than 5% of the gross amount of the loan.
- Other charges as authorized by the Credit Reform Act.
- A reasonable annual fee for the privilege of receiving open-end credit from the licensee or registrant.

Under the bill, actual expenses incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a secondary mortgage loan by an exclusive broker of the licensee or registrant could be assessed only until March 31, 2009.

Penalties

Under the Secondary Mortgage Loan Act, 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 engages in this State in the business of making secondary mortgage loans without a license as required under the Act, is guilty of a misdemeanor punishable by a maximum fine of \$5,000, imprisonment for up to three years, or both. Under the bill, this provision would apply to a person who did not have a license, registration, or secondary mortgage loan officer registration. The misdemeanor would be punishable by a maximum fine of \$15,000, imprisonment for up to one year, or both.

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 MBLSA 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 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.

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

Senate Bill 1554

Under the Mortgage Brokers, Lenders, and Servicers Licensing Act, 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 Section 2a of the Act, which requires criminal records checks and prescribes registration procedures and

criteria. Under the bill, these provisions would apply beginning April 1, 2009.

Under the Act, 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 must conduct a criminal records check of that individual and submit its results to the Commissioner. A 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. The bill would delete these requirements.

Under the bill, a licensee or registrant that employed or offered to employ, or engaged or offered to engage as an agent, an individual as a loan officer to originate mortgage loans, would have to conduct a criminal history check of that individual. The State Police and the FBI would have to perform the criminal history check. The individual who was the subject of the criminal history check would have to have his or her fingerprints taken by a law enforcement agency or by another person that the Commissioner determined was 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 would have to 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 would have to conduct the criminal history check and provide its results to the licensee or registrant. The results would have to 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 would have to submit the results of the criminal history check to the Commissioner with the application for loan officer registration.

Under the Act, the Commissioner must prescribe the form of application for registration as a loan officer. The application form must require that an applicant 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 would have to include the following:

- The signature of the applicant, and his or her declaration, made under penalties of perjury, that the information and statements made in or included with the application were true, accurate, and complete.
- The signature of an officer on behalf of the licensee or registrant that employed or offered to employ, or engaged or offered to engage as an agent, the applicant, and the officer's declaration on behalf of the licensee or registrant, made under penalties of perjury, that the information and statements in or included with the application were true, accurate, and complete to the best of his or her knowledge and belief.

The Act states that an employee or agent of a mortgage broker, mortgage lender, or mortgage servicer that is exempt from licensing or registration under the Act may apply to be a loan officer registrant. The bill would delete this provision.

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 certain conditions including, until December 31, 2008, that the person is solely performing services as an employee of only one mortgage broker, mortgage lender, or mortgage servicer. Under the bill, this would continue to apply after 2008. The bill would require the person to provide loan officers services as a an employee or agent of only one mortgage broker, mortgage lender, or mortgage servicer and be registered as a loan officer registrant under the Act.

Until December 31, 2008, unless a residential mortgage originator is otherwise licensed or registered under the Act, a residential mortgage originator may 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 is prohibited from paying a mortgage originator other than an employee. The bill would extend these provisions until March 31, 2009.

Beginning January 1, 2009, a loan officer may not directly or indirectly receive 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.

A mortgage broker, lender, or servicer may not pay a loan officer who does not meet these requirements.

Under the bill, these provisions would begin on April 1, 2009.

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

Legislative Analyst: Craig Laurie

FISCAL IMPACT

Senate Bill 1552

The bill would require 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 would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. To the extent that the bill would increase

convictions for making secondary mortgage loans without a registration or secondary mortgage loan officer registration, local governments would incur increased costs of incarceration in local facilities, which vary by county. To the extent that the reduction in the maximum incarceration time would decrease incarceration time, local governments would incur decreased costs of incarceration in local facilities. Increased penal fine revenue would benefit public libraries.

Fiscal Analyst: Bruce Baker
Lindsay Hollander
Elizabeth Pratt
Maria Tyszkiewicz

Senate Bill 1553

The bill would redirect revenue collected under the Secondary Mortgage Loan Act from the Consumer Finance Fees Account to the MBLSA 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. Estimated revenue from the license and registration fees included under the Secondary Mortgage Loan Act for FY 2007-08 is \$1,058,000. The Office of Financial and Insurance Regulation received a supplemental appropriation for FY 2007-08 to support the increase of 5.0 FTEs to administer this program. Those positions are currently being filled.

Senate Bill 1554

The bill would require 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 would allow time for criminal background checks to be completed and filed and would have no fiscal impact on the Office of Financial and Insurance Regulation.

Senate Bill 1555

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

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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.