



Senate Fiscal Agency  
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## BILL ANALYSIS



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House Bill 5287 (Substitute H-2 as passed by the House)  
House Bill 5288 (Substitute H-3 as passed by the House)  
House Bill 5289 (Substitute H-1 as passed by the House)  
House Bill 5290 (Substitute H-1 as passed by the House)  
House Bill 5291 (as passed by the House)

Sponsor: Representative Shanelle Jackson (H.B. 5287)  
Representative Andy Coulouris (H.B. 5288)  
Representative Ed Clemente (H.B. 5289)  
Representative David Robertson (H.B. 5290)  
Representative Darwin Booher (H.B. 5291)

House Committee: Banking and Financial Services  
Senate Committee: Banking and Financial Institutions

Date Completed: 2-20-08

**CONTENT**

**The bills would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to do the following:**

- Prohibit an employee or agent of a licensee or registrant from performing services of a loan officer unless he or she registered or otherwise complied with the legislation.
- Allow an applicant for loan officer registration to perform services as a loan officer while his or her application was pending if certain conditions were met.
- Prohibit a loan officer from receiving any compensation, commission, or other benefits for originating a mortgage loan unless the loan officer was a loan officer registrant or the compensation, commission, or other benefits were paid by the licensee or registrant for which the loan officer originated that mortgage loan.
- Require a loan officer registrant to notify the Commissioner of the Office of Financial and Insurance Services (OFIS) within 10 days after certain occurrences.
- Extend the Commissioner's supervisory authority to loan officers originating mortgage loans in this State.

**-- Prohibit the Commissioner from using a complaint in any subsequent decision to issue, renew, suspend, or revoke the registration of a loan officer against whom a complaint was filed if an investigation did not disclose evidence of a violation.**

The bills are tie-barred to each other and Senate Bills 826 through 833 (which would amend the same Act).

(Senate Bill 826 would create the Mortgage Industry Advisory Board and require it to communicate to the Commissioner issues of concern to the residential mortgage industry. Senate Bill 827 would delete a provision of the sentencing guidelines. Senate Bill 828 would add or change the definitions of various terms, including "loan officer". Senate Bill 829 would establish procedures for renewing loan officer registration. Senate Bill 830 would require a loan officer registrant to pay an annual fee established by the Commissioner. Senate Bill 831 would include references to loan officer registrant and to a loan officer registration in provisions of the Act. Senate Bill 832 would prohibit a loan officer registrant from engaging in certain acts including fraud, deceit, and material misrepresentation, or making a false, misleading, or deceptive advertisement.

Senate Bill 833 would revise the criminal penalty for a person who engaged in the business of a broker, lender, or servicer without a license or registration or violated other provisions of the Act.)

### **House Bill 5287 (H-2)**

Currently, a person may not act as a mortgage broker, lender, or servicer without first obtaining a license or registering under the Act, unless one or more exceptions apply. The bill would delete an exception for a person who is solely performing services as an employee of only one mortgage broker, mortgage lender, or mortgage servicer.

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.

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

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

Currently, unless a residential mortgage originator is otherwise licensed or registered under the Act, a mortgage broker, mortgage lender, or mortgage servicer may not pay directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits to a residential mortgage originator other than an employee of the mortgage broker, lender, or servicer. The bill instead would prohibit a mortgage broker, lender, or servicer from paying any compensation, commission, fee, points, or other remuneration or benefits to any of the following:

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

Under the bill, "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 the foregoing. The term also includes an officer of a corporation.)

### **House Bill 5288 (H-3)**

The bill would prohibit an employee or agent of a licensee or registrant from performing services of a loan officer unless he or she registered or otherwise complied with the bill. If an individual were employed or engaged as an agent to originate mortgage loans by a licensee or registrant, that individual would have to apply for 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 a written application and including with it the annual operating fee (which Senate Bill 830 would establish).

The OFIS Commissioner would have to prescribe the form of application for registration as a loan officer. Subject to provisions regarding waiver of requirements (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 had 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 mortgage broker, lender, or servicer in which the applicant

held more than 25% of the ownership interest or as a loan officer.

- Proof in the form of a certificate of completion or other evidence acceptable to the Commissioner that the applicant 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 a criminal records check of the applicant conducted by the licensee or registrant that was the employer or principal of the applicant, that included a check of the applicant's fingerprints, taken by a law enforcement agency or any other person determined by the Department of Labor and Economic Growth to be qualified to take fingerprints.
- Any other information required by the Commissioner.

The 24 hours of instruction required above 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 loan officer registration could perform services as a loan officer while his or her application was pending if all of the following were met:

- The applicant had submitted his or her fingerprints to the licensee or registrant that was the employer or principal of the applicant for purposes of the criminal records check described above.
- The licensee or registrant that was the employer or principal of the applicant had submitted the request for the criminal records check to the law enforcement agency or person that was conducting the records check of the applicant on behalf of the licensee or registrant.
- If the licensee or registrant that was the employer or principal of the applicant

received the results of the criminal records check while the loan officer registration application was pending, the criminal records check did not disclose that the applicant had been convicted of or pleaded no contest to a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or a felony.

- The licensee or registrant that was the employer or principal of the applicant had given the Commissioner written notice that the applicant was beginning to provide services as a 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 misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or a felony.
- An applicant against whom the Commissioner had issued a prohibition order under Section 18a.

(Under Section 18a, if in the opinion of the Commissioner a person has engaged in fraud, the Commissioner may serve upon that person a written notice of intention to prohibit the person from being employed by, an agent of, or control person of a licensee or registrant under the Act or a licensee or registrant under a financial licensing act.)

The Commissioner would have to register a 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 loan officer for at least four and a half years by one or more licensees, registrants, or people exempt from the Act under Section 25, or he or she continuously owned at least a 25% interest in a licensee or registrant.
- He or she was not the subject of any prohibition orders issued by the Commissioner under Section 18a in the five-year period immediately preceding the bill's effective date.
- Within eight months after the bill's effective date, he or she took the examination required above and correctly answered at least 75% of the questions on it.

- Within eight months after the bill's effective date, he or she submitted an application described above (although the applicant would not have to include proof of completion of the instruction required).
- He or she was not an applicant to whom the Commissioner was prohibited from issuing a registration.

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

The Commissioner could waive any of the requirements for loan officer registration under the bill if the applicant had a valid, similar license or registration from another state that had a reciprocal agreement with the Commissioner.

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

An individual employed or engaged as an agent by a licensee or registrant as a loan officer could not use the title or designation "loan officer", "loan originator", or "mortgage loan originator", if he or she were not a loan officer registrant. A 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 registration requirements of the Act unless OFIS approved use of that word.

### **House Bill 5289 (H-1)**

The bill would require a loan officer registrant 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 any felony involving embezzlement, forgery, fraud, a financial transaction, or securities.

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

### **House Bill 5290 (H-1)**

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

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

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

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

The Commissioner has the power to advise the Attorney General or the prosecuting

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

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

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

### **House Bill 5291**

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

If the investigation does not disclose evidence of a violation of the Act or a rule promulgated or an order issued under it, the Commissioner may not use the complaint in any subsequent decision to issue, renew, suspend, or revoke the license or suspend or revoke the registration of the person against whom the complaint was filed. Under the bill, this provision would apply to a license or loan officer registration.

MCL 445.1652 (H.B. 5287)  
Proposed MCL 445.1652a (H.B. 5288)

Proposed MCL 445.1652c (H.B. 5289)  
MCL 445.1661 & 445.1662 (H.B. 5290)  
MCL 445.1664 (H.B. 5291)

Legislative Analyst: Craig Laurie

### **FISCAL IMPACT**

The bills would increase the regulatory responsibilities of the Office of Financial and Insurance Services by requiring regulation of mortgage loan officers. This would increase the administrative costs of OFIS, which would be offset by revenue generated by fees paid by registrants. The office is funded entirely by restricted revenue paid by regulated firms and individuals.

Fiscal Analyst: Elizabeth Pratt  
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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.