



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bills 379, 380, and 381 (as introduced 3-12-09) (as enacted)  
Sponsor: Senator Dennis Olshove (S.B. 379)  
          Senator Gerald Van Woerkom (S.B. 380)  
          Senator Bill Hardiman (S.B. 381)  
Committee: Banking and Financial Institutions

Date Completed: 3-17-09

### **CONTENT**

**Senate Bill 379** would amend the Consumer Financial Services Act to do the following:

- Prohibit a licensee under the Act acting as a mortgage broker or mortgage lender from employing or engaging an individual as a loan officer to originate mortgage loans unless he or she were a loan officer registrant under the Mortgage Brokers, Lenders, and Servicers Licensing Act.
- Prohibit a licensee acting as a broker or lender from employing or engaging an individual as a secondary mortgage loan officer to originate secondary mortgage loans unless he or she were a secondary mortgage loan officer registrant under the Secondary Mortgage Loan Act.

**Senate Bill 380** would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to include a licensee under the Consumer Financial Services Act in the definition of "licensee" for the purpose of provisions related to the performance of services of a loan officer by the employee or agent of a licensee or registrant.

**Senate Bill 381** would amend the Secondary Mortgage Loan Act to include a licensee under the Consumer Financial Services Act in the definition of "licensee" for the purpose of provisions related to the performance of services of a secondary mortgage loan officer by the employee or agent of a licensee or registrant.

All of the bills are tie-barred to each other.

### **Senate Bill 379**

The bill would prohibit a licensee under the Consumer Financial Services Act acting as a mortgage broker or mortgage lender from employing or engaging an individual as a loan officer to originate mortgage loans unless he or she were a loan officer registrant under the Mortgage Brokers, Lenders, and Servicers Licensing Act. As used in this provision, "loan officer", "loan officer registrant", "originate", "mortgage broker", and "mortgage lender" would mean those terms as defined the Mortgage Brokers, Lenders, and Servicers Licensing Act.

(The Mortgage Brokers, Lenders, and Servicers Licensing Act defines "loan officer" as an individual who is an employee or agent of a mortgage broker, mortgage lender, or mortgage servicer; who originates 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. "Loan officer registrant" means an individual who is currently registered under the Act. "Originate" means to negotiate, arrange, or offer to negotiate or arrange a mortgage loan between a mortgage lender and one or more individuals or to place, assist in placing, or find a mortgage loan for one or more individuals. "Mortgage broker" means a person who, directly or indirectly, serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan or who serves or offers to serve as an agent for a person who makes or offers to make mortgage loans. "Mortgage lender" means a person who, directly or indirectly, makes or offers to make mortgage loans.)

The bill also would prohibit a licensee acting as a broker or lender from employing or engaging an individual as a secondary mortgage loan officer to originate secondary mortgage loans unless he or she were a secondary mortgage loan officer registrant under the Secondary Mortgage Loan Act. As used in this provision, "broker", "lender", "originate", "secondary mortgage loan officer", and "secondary mortgage loan officer registrant" would mean those terms as defined in the Secondary Mortgage Loan Act.

(The Secondary Mortgage Loan Act defines "broker" as a person who, directly or indirectly, serves or offers to serve as an agent for a person attempting to obtain a secondary mortgage loan or who serves or offers to serve as an agent for a person who makes or offers to make a secondary mortgage loan. "Lender" means a person who, directly or indirectly, makes or offers to make secondary mortgage loans. "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. "Secondary mortgage loan officer" means 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 is currently registered under the Act or an individual who is not required to register to perform services of a secondary mortgage loan officer because 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 because he or she is currently registered as a loan officer under that Act.)

### **Senate Bill 380**

The Mortgage Brokers, Lenders, and Servicers Licensing Act defines "licensee" as a person licensed or required to be licensed under the Act. Under the bill, as used in Sections 2a, 2b, and 2c of the Act, the term also would include a licensee under the Consumer Financial Services Act.

(Under the Consumer Financial Services Act, a person may not engage in a business activity (any activity regulated by any of the financial licensing laws listed in the Act) unless the person is licensed under the Act or the appropriate financial licensing act. The Act applies to a person who engages in any business activity if the person is not licensed or, as applicable, registered under the Act or the applicable financial licensing act and is not otherwise exempt from applicable licensing or registration requirements. If a person engages in one or more business activities without the applicable licenses or registrations, the Commissioner of Financial and Insurance Regulation may enforce the applicable licensing or registration requirements under either the Act or one or more of the financial licensing acts. The Act does not apply to a depository financial institution.

Section 2a of the Mortgage Brokers, Lenders, and Servicers Licensing Act, beginning April 1, 2009, prohibits 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 the section; requires a licensee or registrant that employs or engages an individual loan officer to originate mortgage loans after March 31, 2009, to conduct a criminal history check of that individual; and requires an individual employed or engaged as an agent to originate mortgage loans by a licensee or registrant to apply for loan officer registration within 90 days after he or she begins providing services.

Section 2b pertains to the renewal of loan officer registration.

Section 2c requires a loan officer registrant to provide written notice to the Commissioner within 10 days after the occurrence of certain events, including the termination of his or her employment or agency relationship with a licensee or registrant; the start of his or her employment or an agency relationship with a licensee or registrant; or his or her conviction of a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or a felony. Section 2c also requires a licensee or registrant to notify 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.)

The Mortgage Brokers, Lenders, and Servicers Licensing Act defines "individual investor" as a person that resides in this State or has its principal place of business in this State. The term does not include a bank, savings bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the Federal Investment Company Act of 1940, pension or profit sharing plan if its assets are managed by a bank or trust company or other institutional manager, financial institution, institutional manager, broker-dealer that is a member of the New York Stock Exchange or registered under the Uniform Securities Act, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a mortgage lender or mortgage servicer.

Under the bill, "individual investor" would not include a person listed above that was registered under the Uniform Securities Act or the Uniform Securities Act (2002).

### **Senate Bill 381**

The Secondary Mortgage Loan Act defines "licensee" as a person licensed or required to be licensed under the Act. Under the bill, as used in Sections 2a, 2b, 2c, and 2d of the Act, the term also would include a licensee under the Consumer Financial Services Act.

(Section 2a of the Secondary Mortgage Loan Act, beginning April 1, 2009, prohibits 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, from performing services of a secondary mortgage loan officer unless he or she registers or otherwise complies with provisions of the section that require criminal history checks, prescribe registration application requirements, and allow a person to perform services as a secondary mortgage loan officer while his or her application is pending.

Section 2b prohibits a secondary mortgage loan officer from receiving any compensation, commission, fee, points, or other remuneration or benefits for originating a secondary mortgage loan unless 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, or 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.

Section 2c pertains to the renewal a secondary mortgage loan officer registration.

Section 2d requires a secondary mortgage loan officer registrant to provide written notice to the Commissioner within 10 days after the occurrence of certain events, including the termination of his or her employment or agency relationship with a licensee or registrant; the start of his or her employment or an agency relationship with a licensee or registrant; or his or her conviction of a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or a felony. Section 2d also requires a licensee or registrant to notify 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.)

MCL 487.2059 (S.B. 379)  
MCL 445.1651a (S.B. 380)  
MCL 493.51 (S.B. 381)

Legislative Analyst: Craig Laurie

### **FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt  
Maria Tyszkiewicz

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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.