



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 43 (Substitute S-1 as reported)
Senate Bill 44 (Substitute S-1 as reported)
Sponsor: Senator Tupac A. Hunter
Committee: Banking and Financial Institutions

CONTENT

Senate Bill 43 (S-1) would amend the Michigan Penal Code to create the felony of residential mortgage fraud, and do the following:

- Prescribe a penalty of up to 15 years' imprisonment and/or a maximum fine of \$100,000 if the loan value were \$100,000 or less; or imprisonment for up to 20 years and/or a maximum fine of \$500,000 if the loan value exceeded \$100,000.
- Allow forfeiture of property used in connection with a violation.
- Provide that it would be an affirmative defense if a defendant had a policy prohibiting conduct by employees and agents that would be a violation, required a criminal history check before employing or engaging an employee or agent, and had a requirement not to employ or engage someone who had been convicted of a crime involving fraud.
- Allow a victim of residential mortgage fraud to request a court order invalidating the residential mortgage and other documents involved in the mortgage lending process, if a person were convicted of residential mortgage fraud or a lesser included offense
- If an order invalidating mortgage documents were entered, require the victim to record a certified copy of the order and a copy of the invalid mortgage in the office of register of deeds.

A person would be guilty of residential mortgage fraud if the person knowingly, with intent to defraud, did any of the following

- Made a false statement or misrepresentation concerning a material fact or deliberately concealed or failed to disclose a material fact during the mortgage lending process.
- Used or facilitated the use of a false statement or misrepresentation made by another person concerning a material fact, or deliberately used or facilitated the use of another person's concealment or failure to disclose a material fact during the mortgage lending process.
- Received or attempted to receive any proceeds or any other money in connection with the mortgage lending process that the person knew resulted from a violation of either of the first two provisions.
- Filed or caused to be filed with the register of deeds of any county of this State any document involved in the mortgage lending process that the person knew contained a deliberate material misstatement, misrepresentation, or omission.
- Failed to disburse funds in accordance with the settlement or closing statement for the mortgage loan.
- Conspired to violate any of the provisions listed above.

"Residential mortgage loan" would mean a loan or agreement to extend credit made to a person that is secured by a mortgage, security interest, or other document representing a security interest or lien on any interest in a one-family to four-family dwelling located in Michigan. The term would include a renewal, extension, or refinancing of a residential mortgage loan.

Senate Bill 44 (S-1) would amend the Code of Criminal Procedure to include residential mortgage fraud in the sentencing guidelines. If the loan value were \$100,000 or less, the offense would be a Class C felony against public order with a 15-year statutory maximum. If the loan value exceeded \$100,000, the offense would be a Class B felony against public order with a statutory maximum of 20 years. The bill is tie-barred to Senate Bill 43.

Proposed MCL 750.219d (S.B. 43)
MCL 777.16l (S.B. 44)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class C offense under the bills would receive a sentencing guidelines minimum sentence range of 0-11 months to 62-114 months. An offender convicted of the Class B offense under the bills would receive a sentencing guidelines minimum sentence range of 0-18 months to 117-160 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$35,000. Additional penal fine revenue would benefit public libraries.

Date Completed: 5-4-11

Fiscal Analyst: Matthew Grabowski

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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.