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BILL ANALYSIS

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Senate Bills 43 and 44 (as introduced 1-19-11)
Sponsor: Senator Tupac A. Hunter
Committee: Banking and Financial Institutions

Date Completed: 5-3-11

CONTENT

Senate Bill 43 would amend the Michigan Penal Code to create the crime of residential mortgage fraud, and do the following:

- Establish felony penalties for the offense.
- Allow forfeiture of property used in connection with a violation.
- Allow a borrower to rescind a mortgage lending transaction if the lender were convicted of a violation.

Senate Bill 44 would amend the Code of Criminal Procedure to include residential mortgage fraud in the sentencing guidelines.

The bill is tie-barred to Senate Bill 43.

Senate Bill 43

Elements of the Crime; Penalty

Under the bill, a person would be guilty of the crime 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 a loan commitment made in connection with the mortgage lending process.
- Conspired to violate any of the provisions listed above.

("Mortgage lending process" would mean the process through which a person seeks or obtains a residential mortgage loan, including solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. "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.)

A person who committed residential mortgage fraud would be guilty of a felony punishable by imprisonment for up to 15 years, a maximum fine of \$100,000, or both. If the loan value stated on documents used in the mortgage lending process exceeded \$100,000, however, the penalty would be up to 20 years' imprisonment, a maximum fine of \$500,000, or both.

Each violation would constitute a separate offense.

A crime of residential mortgage fraud could not be predicated solely upon information lawfully disclosed under Federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

Forfeiture

Property of any kind used or intended for use in the course of, derived from, or received in connection with residential mortgage fraud by the person who committed the violation would be subject to forfeiture in the same manner as provided in Chapter 47 of the Revised Judicature Act. (Under Chapter 47, property that is the proceeds or substituted proceeds of a crime, or an instrumentality of a crime, is subject to seizure by, and forfeiture to, a local unit of government or the State, according to procedures set forth in that chapter.)

Rescission by Borrower

If a lender or any agent of the lender were convicted of residential mortgage fraud, the borrower in the mortgage lending transaction could rescind the transaction within six months after the date of conviction, if the borrower gave written notice to the lender and recorded that notice with the register of deeds of the county where the mortgage was recorded.

Venue

For the purpose of determining venue of a prosecution for residential mortgage fraud, a violation would be considered to have been committed in any of the following:

- The county in which the residential property for which the mortgage loan was obtained or sought was located.
- The county in which an owner of the property resided.
- The county in which a material act was performed in furtherance of the violation.

Additional Definitions

The bill would define "person" as an individual, corporation, limited liability company, partnership, trustee, association, or other legal entity.

"Documents involved in the mortgage lending process" would include mortgages; deeds; surveys; inspection reports; uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for

loan applications, such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any written disclosures required by law.

Senate Bill 44

Under the bill, residential mortgage fraud involving a loan value of \$100,000 or less would be a Class D felony against the public trust with a statutory maximum of 15 years. Residential mortgage fraud involving a loan value of more than \$100,000 would be a Class B felony against the public trust with a statutory maximum of 20 years.

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 D offense under the bills would receive a sentencing guidelines minimum sentence range of 0-6 months to 43-76 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.

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.