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

House Bill 5287 (Substitute S-1 as reported by the Committee of the Whole)
House Bill 5288 (Substitute S-1 as reported by the Committee of the Whole)
House Bill 5289 (Substitute S-1 as reported)
House Bill 5290 (Substitute H-1 as reported without amendment)
House Bill 5291 (as reported without amendment)
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

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 he or she were 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).

House Bill 5287 (S-1) would prohibit a loan officer, beginning January 1, 2009, 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.

Beginning January 1, 2009, a mortgage broker, lender, or servicer could not pay 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.

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, and a residential mortgage originator may not receive any such compensation. Under the bill, these provisions would not apply after December 31, 2008.

Under the Act, 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 Act makes an exception for a person who is solely performing services as an employee of only one mortgage broker, mortgage lender, or mortgage servicer. Under the bill, this exception would not apply after December 31, 2008.

House Bill 5288 (S-1) 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 an annual operating fee.

The OFIS Commissioner would have to prescribe the form of application for registration as a loan officer. Subject to provisions regarding waiver of requirements, the form would have to require that an applicant provide specified information, including the following:

-- 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 to practice any profession or occupation in any jurisdiction revoked or suspended.
-- Proof 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.
-- 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, including a check of the applicant's fingerprints.

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 loan officer registration could perform services as a loan officer while his or her application was pending if the licensee or registrant that was the applicant's employer or principal had completed a criminal records check of the applicant; the records check did not disclose a conviction of, or no contest plea to, a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or a felony; and the employer or principal had notified the Commissioner 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 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, or to an applicant against whom the Commissioner had issued a prohibition order under (a written notice of intention to prohibit a person suspected of engaging in fraud from being employed by a licensee or registrant).

The Commissioner would have to register a loan officer who met criteria described in the bill, and could waive any of the requirements for loan officer registration if an applicant had a valid, similar license or registration from another state that had a reciprocal agreement with the Commissioner.

The Commissioner could disclose to the public certain business information of loan officer registrants but could not make personal information available.

House Bill 5289 (S-1) 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 a misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities, or a felony.

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) would authorize the Commissioner to 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, as currently provided regarding licensees.

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 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 would extend the following provisions to a loan officer registration.

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.

MCL 445.1652 (H.B. 5287) Legislative Analyst: Craig Laurie
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)

FISCAL IMPACT

The bills would increase the regulatory responsibilities of the Office of Financial and Insurance Services by requiring regulation of mortgage loan officers beginning January 1, 2009. 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.

Date Completed: 2-26-08 Fiscal Analyst: Elizabeth Pratt
Maria Tyszkiewicz