House
Legislative
Analysis
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REDUCE MORTGAGE BROKER DEPOSIT AMOUNT

House Bill 5737 as enrolled
Third Analysis (12-15-88)

Sponsor: Rep. Maxine Berman
House Committee: Corporations and Finance
Senate Committee: Finance

THE APPARENT PROBLEM:

The Mortgage Brokers, Lenders, and Servicers Licensing Act was created last year in response to the Diamond Mortgage scandal of 1986 in which investors lost millions of dollars, apparently due to unscrupulous servicing of mortgage loans. The act requires those applying to be licensed as mortgage brokers or lenders to submit proof of financial responsibility, in the form of a surety bond, letter of credit or similar note of security, in the amount of $25,000 to the Financial Institutions Bureau (FIB) — the administrator of the act. When the act was created, the bureau felt the $25,000 security requirement would not be too high for most smaller companies wishing only to broker or make a limited number of low-cost mortgage loans. The bureau, however, after administering the act for the past year, apparently has received complaints from a number of smaller firms who would like to offer limited mortgage services but are finding it difficult to raise this initial amount. In fact, the act's original intent apparently was to regulate the largest mortgage companies that service a greater number of and larger dollar amounts in mortgage loans. (Those applying to be licensed as "mortgage servicers" under the act must submit a $100,000 security note.) Some have even suggested that such smaller lenders or brokers should not even be required to post the bond, in certain cases, since they present little danger to borrowers. In addition, some feel the act is particularly stringent on those who service a small number of land contracts, even fewer of which involve collecting money for the payment of taxes or insurance. These smaller "mortgage servicers" present a relatively small risk to the public but are nonetheless fully regulated under the act, and therefore must pay the full licensing and bonding fees. Some have therefore suggested amending the act to ease bonding requirements for mortgage broker applicants in certain cases, and to deregulate certain smaller land contract servicers.

THE CONTENT OF THE BILL:

The bill would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to reduce the required deposit amount for a person applying to be licensed as a mortgage broker or lender from $25,000 to $15,000. (This provision would not affect those applying to be licensed as "mortgage servicers," who are required to submit a $100,000 surety deposit.) In place of a surety bond or letter of credit the act allows a license applicant to submit, among other things, a true copy of the corporate surety bond the applicant is required to maintain in order to service mortgage loans on behalf of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Government National Mortgage Association (GNMA). The bill would delete this as an option for showing proof of financial responsibility.

The bill would clarify the definition of "mortgage loan" to be any loan secured by a first mortgage on real property, or a land contract covering real property, "used, or improved to be used, as a dwelling."

In addition, the bill specifies that a mortgage broker would be exempt from the provision regarding the submission of proof of financial responsibility if he or she had (1) deposited all funds received from a prospective borrower into an escrow account and did not possess or control the funds associated with the loan application prior to the closing or denial of the mortgage loan, and (2) submitted to the commissioner an opinion by a certified public accountant based on current financial information verifying a net worth as required under the act. The bill would not prohibit the disbursement of funds by the escrow agent to third parties for the actual cost of a property appraisal and credit report in connection with a mortgage loan application. An escrow account that was created as specified in the bill would have to be established in a manner approved by the commissioner and deposited only in a federally insured depository financial institution (a bank, savings and loan, or credit union).

The commissioner would have to waive the surety bond requirements of the act upon application by a mortgage servicer who was a licensed real estate broker or real estate salesperson, serviced more than 75 land contracts, had a satisfactory record of compliance with applicable state and federal laws, and did not engage in any other activity regulated by the act.

The commissioner would have to order a mortgage broker who was exempt from the surety bond requirement pursuant to provisions in the bill, and who had taken possession of funds associated with a loan application prior to the closing or denial of the mortgage loan, to cease and desist from brokering mortgages until the mortgage broker provided proof of financial responsibility pursuant to provisions in the bill.

Currently, a person applying for a license a first time or after the suspension or revocation of a license has to pay a $200 investigation fee, and a $300 annual license fee. The bill specifies that if the initial or renewed license had an effective date within six months of the expiration date provided in the act, the cost of the initial or renewal annual license fee would be pro-rated to $150.

Finally, the bill would amend the act to exempt from regulation a mortgage servicer that serviced only 75 or fewer land contracts, no more than ten of which required the collection of money for the payment of taxes or insurance. The bill would not exempt a mortgage servicer who collected money for the payment of taxes or insurance from the provisions in Public Act 125 of 1966 (which requires certain mortgagees and their agents to furnish annual statements to mortgagors). All fees would have to be returned to any mortgage servicer described in the bill who

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had applied for a license and paid the fees required by the act, and who on the effective date of the bill was exempted from licensing.

MCL 445.1654

FISCAL IMPLICATIONS:

The Financial Institutions Bureau of the Department of Commerce estimates the bill's provision which would permit an applicant to pay a pro-rated fee of $150 in certain cases would reduce revenues used to operate the bureau about $13,000 annually. (12-15-88)

ARGUMENTS:

For:

The act's original intent was to balance the need for better regulation of mortgage companies with a need to preserve a healthy, competitive and growing industry. Bigger firms licensed as mortgage "servicers" have to prove greater financial responsibility by submitting $100,000 surety upon application. The need to regulate smaller brokers and lenders apparently is not as great. In fact, the initial bonding amount of $25,000 suggested by the FIB was an arbitrary figure which the bureau realized could be subject to alteration after some time if necessary. After one year of enforcing the act, the bureau apparently feels the amount is too high and, in some cases, may not be necessary at all. Reducing the bond amount, or in some cases reducing the requirement to show financial proof at all, will encourage more firms to enter the first mortgage market, thereby improving competition among firms and, ultimately, saving borrowers money. The bill, however, would not alter the bureau's responsibility to monitor firms — both annually and on an irregular basis — and, if necessary, punish licensees.

For:

The act generally is intended to regulate those businesses that provide substantial primary mortgage loan services involving large sums of money. A mortgage service provider that services a small number of land contract loans, of which only a few require the collection of money for the payment of taxes or insurance, should not have to be licensed; the license fee and bonding requirements impose a substantial burden that is not warranted by the relatively small risk that such lenders present to the public. The bill would save these small businesses money, and would relieve the FIB of the responsibility to inspect these businesses — a task the bureau feels is unnecessary.

Against:

Why decrease the safety factor currently extended to those with any amount of money tied up in a mortgage contract? After the heartache and embarrassment caused by the Diamond Mortgage scandal, where investors and borrowers lost huge sums of money, it seems foolish to relax laws intended to protect against similar improprieties. Does it matter whether a person is cheated by a small operator rather than a large one? If anything, the act should provide stiffer licensure requirements and penalties.

Response: To protect against impropriety, the bill includes a provision that would require an applicant as a mortgage broker to submit an opinion by a certified public accountant based on current financial information verifying an adequate net worth as would be required under the bill. Further, the bureau feels the act already provides enough protection for borrowers and investors by requiring that all licensees are monitored on a regular and irregular basis. The bonding requirement defeats the need to allow smaller firms to easily enter the market — additional firms that could increase healthy competition within the industry and actually save consumers money.