

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

SFA



BILL ANALYSIS

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

Senate Bills 773, 768 through 777, and 774 (as introduced 10-16-01)

Sponsor: Senator Burton Leland

Committee: Banking and Financial Institutions

Date Completed: 2-13-02

CONTENT

Senate Bill 773 would create the "Michigan Predatory Lending Practices Act" to do the following:

- Prohibit lenders from engaging in certain deceptive practices for home loans and high-cost home loans.
- Provide that a home loan could not contain a prepayment penalty.
- Require the Commissioner of the Office of Financial and Insurance Services (OFIS) to determine whether a statement or representation for a home loan was deceptive.
- Require a high-cost home loan lender to provide written and oral disclosure of certain information such as monthly payments, loan fees, and prepayment penalties.
- Require a high-cost home loan lender to furnish a statement, as described in the bill, before he or she sold or assigned a loan.
- Allow high-cost home lenders, who failed to comply with the bill but were acting in good faith, to take certain actions in order to avoid being in violation of the bill.
- Allow the Attorney General, the OFIS Commissioner, or any party to a high-cost home loan to enforce the bill.
- Allow a borrower to recover actual damages, damages equal to the finance charges, and/or reasonable costs and attorney fees.
- Establish a criminal penalty for violations of the bill.

Senate Bills 768 through 772 and Senate Bill 774 would amend the Banking Code; the Savings Bank Act; the credit union Act; the Savings and Loan Act; the Mortgage Brokers, Lenders, and Servicers Licensing Act; and the Secondary Mortgage Loan Act, respectively, to

provide that a bank, savings bank, credit union, association, or a licensee, would be subject to and would have to comply with all of the requirements of the proposed "Michigan Predatory Lending Practices Act".

A more detailed description of Senate Bill 773 follows.

"Home loan" would mean a loan, other than a reverse mortgage transaction, in which the principal amount of the loan did not exceed the conforming loan size limit for a single-family dwelling as established by the Federal National Mortgage Association; the borrower was a natural person; the debt incurred was primarily for personal, family, or household purposes; and the loan was secured by a mortgage or similar instrument on real estate on which there presently was or would be located a structure or structures designed principally for occupation of one to four families and that was or would be occupied by the borrower as his or her principal dwelling.

"High-cost home loan" would mean a home loan in which the annual percentage rate of the home loan exceeded by 6.5 or more percentage points the weekly average yield on U.S. Treasury securities adjusted to a constant maturity of five years as of the week immediately preceding the week in which the interest rate for the loan was established; the total points and fees exceeded 3% of the total loan amount if the total loan were \$20,000 or more; or the total points and fees exceeded the lesser of 5% of the total loan amount or \$800, if the total loan amount were less than \$20,000.

Home Loan

Deceptive Statement. A lender, appraiser, or real estate agent could not make or cause to

be made, any false, deceptive, or misleading statement or representation in connection with a home loan, including a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product, or regarding the value of the dwelling.

A statement or representation would be deceptive or misleading if it had the capacity to deceive or mislead a borrower or potential borrower. The OFIS Commissioner would have to consider the following factors in deciding whether a statement or representation was deceptive or misleading: the overall impression that the statement or representation created; the particular type of audience to which the statement was directed; and whether it could be reasonably comprehended by the segment of the public to which the statement was directed.

Deceptive Practices. A lender would be prohibited from doing the following:

- Recommending or encouraging nonpayment on an existing loan or other debt before or in connection with the closing of a home loan that refinanced all or any portion of the existing loan or debt.
- Charging a fee for a product or service that was not actually provided, or misrepresenting the amount charged or paid to a third party for a product or service.
- Compensating, coercing, or intimidating an appraiser for the purpose of influencing his or her independent judgment with respect to the value of real estate covered by a home loan or being offered as security according to an application for a home loan.
- Requiring or allowing the advance collection of a premium, on a single premium basis, for any credit life, credit disability, credit unemployment, or credit property insurance, and any analogous product.
- Charging a fee for informing any person of the balance due to pay off a home loan.
- Financing any credit life, credit disability, credit property, credit unemployment insurance, or any other life or health insurance premiums or any debt cancellation or suspension agreement or contract fees.

A home loan document in which blanks were

left to be filled in after the contract was signed by the borrower would not be enforceable under the law.

Language. If the discussions between the lender and the borrower were conducted primarily in a language other than English, the lender would have to provide an additional copy of all the information required to be disclosed to the borrower under the Federal Truth in Lending Act, translated into the language in which the discussions were conducted.

Late Payment Fee. A lender could charge a fee for a late payment of an installment on a home loan if the fee did not exceed 5% of the amount due and were not assessed more than once for any single installment.

High-Cost Home Loan

Requirements. A high-cost home loan would be subject to the requirements that would apply to lenders of home loans. In addition, a lender could not make a high-cost home loan without first receiving certification from a counselor approved by the U.S. Department of Housing and Urban Development, a State housing financing agency, or OFIS that the borrower had received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

Deceptive Practices. A lender would be prohibited from doing the following:

- Financing any points and fees; fees or charges payable to third parties; or fees or charges required to refinance an existing high-cost home if the lender also were the lender of the existing loan.
- Knowingly refinancing an existing home loan with a high-cost home loan when the new loan did not have a reasonable, tangible net benefit to the borrower (more than a reduction in the borrower's monthly payment).
- Charging a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under terms of the loan.

A lender also could not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless the lender was presented with a certificate showing that the home improvement had been

completed and payment was made other than by an instrument payable to the borrower or jointly to the borrower and the contractor, or, at the election of the borrower, through a third party escrow agent.

Deceptive Loan. A high-cost home loan could not do the following: include any prepayment fees or penalties; contain a scheduled payment that was more than twice as large as the average of earlier scheduled payments (unless the payment schedule was adjusted to the seasonal or irregular income of the borrower); or be subject to a mandatory arbitration clause that would limit in any way the right of the borrower to seek relief through the judicial process.

In addition, a high-cost home loan could not contain the following:

- A provision that permitted the lender, in its sole discretion, to accelerate the indebtedness.
- A payment schedule with regular periodic payments that resulted in an increase in the principal balance (negative amortization).
- A provision that increased the interest rate after default.
- Terms under which more than two periodic payments required under the loan were consolidated and paid in advance from the loan proceeds provided to the borrower.

Disclosure. A lender of a high-cost home loan would have to provide the borrower, at least three days before closing, clear written and oral disclosure of the following information:

- The amount of the borrower's monthly payments.
- Whether the loan had a variable rate feature and, if so, how it could affect future monthly payments.
- Loan fees being paid by the borrower.
- Information regarding any payments being made to third party creditors from the loan proceeds.

A lender could not sell or otherwise assign a high-cost home loan without giving the purchaser or assignee a statement that the home loan was subject to special rules and conditions as required by law, and that purchasers or assignees of the loan could be liable for all claims and defenses with respect to the mortgage that the borrower could

assert.

Compliance. A lender in a high-cost home loan who, when acting in good faith, failed to comply with the bill's provisions on deceptive practices, would not be in violation of the bill if the lender established within 30 days of the loan closing and before the institution of any action, the borrower was notified of the compliance failure, appropriate restitution was made, and either the high-cost home loan was made to satisfy the bill's requirements, or the terms of the loan were changed in a manner beneficial to the borrower so that the loan would no longer be considered a high-cost home loan.

Alternatively, the lender could establish that the compliance failure was not intentional and resulted from a bona fide error (such as a clerical, calculation, computer malfunction and programming, or printing error), and within 60 days after the discovery of the compliance failure, and before the institution of any action, the borrower was notified of the compliance failure, appropriate restitution was made, and either the high-cost home loan was made to satisfy the bill's requirements, or the terms of the loan were changed in a manner beneficial to the borrower so that the loan would no longer be considered a high-cost home loan.

Ability to Pay

The bill would prohibit a lender from making a home loan unless the lender reasonably believed that one or more of the borrowers, when considered individually or collectively, would be able to make the scheduled payments based upon a consideration their current and expected income, current obligations, employment status, and other financial resources. A borrower would be presumed to be able to make the scheduled payments if his or her total monthly debts, including amounts owed under the loan, did not exceed 50% of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means. A presumption of inability to make the scheduled payments would not arise solely from the fact that the borrower's total monthly debts exceeded 50% of his or her monthly gross income.

Enforcement and Penalties

The Attorney General, the OFIS Commissioner, or any party to a high-cost home loan could enforce the bill. The consumer protections and remedies provided under the bill would be in addition to other protections and remedies that could otherwise be available by law.

A borrower prevailing in a claim under the bill would be entitled to recover actual damages, including consequential and incidental damages; damages equal to the finance charges agreed to in the home loan agreement, plus 10% of the amount financed; and/or reasonable costs and attorney fees.

In addition to any other penalties or remedies provided in the bill or under the law, a person who violated the bill would be guilty of a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$10,000, or both.

Proposed MCL 487.14206 (S.B. 768)

Proposed MCL 487.3435 (S.B. 769)

Proposed MCL 490.10a (S.B. 770)

Proposed MCL 491.7373 (S.B. 771)

Proposed MCL 445.1624a (S.B. 772)

Proposed MCL 493.24a (S.B. 774)

Legislative Analyst: Nobuko Nagata

FISCAL IMPACT

Senate Bill 774

The bill would increase the duties of the Office of Insurance and Financial Services housed in the Department of Consumer and Industry Services and funded entirely from restricted revenue. The bill would require additional compliance monitoring. Currently, the Office receives complaints on lending practices and licenses providers of debt management services. The amount of additional resources that would be required by the duties under the bill is unknown.

The bill would permit the Commissioner of the Office of Financial and Insurance Services or the Attorney General to enforce the proposed Act.

There are no data to indicate how many people would be convicted of violating the bill.

Offenders would receive up to one year's imprisonment in a local facility and/or a fine of up to \$10,000. Local units would incur the cost of probation and incarceration, which varies by county from \$27 to \$65 per day. Public libraries would receive the penal fine revenue.

S0102\s773sa

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.

Senate Bills 768 through 772 and 774

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

Fiscal Analyst: Elizabeth Pratt
Bethany Wicksall