

BROKER LICENSE EXEMPTION

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Senate Bill 290 as passed by the Senate

Sponsor: Sen. Randy Richardville

House Committee: Banking and Financial Services

Senate Committee: Banking and Financial Institutions

First Analysis (4-17-07)

BRIEF SUMMARY: Senate Bill 290 would exempt from licensure under the Secondary Mortgage Loan Act an individual who is an employee of a Professional Employer Organization (PEO) and is solely performing services as an employee of only one mortgage broker, lender, or servicer.

FISCAL IMPACT: There is no fiscal impact on the State of Michigan or its local units of government.

THE APPARENT PROBLEM:

Many small businesses find it beneficial to lease employees from professional employer organizations (PEOs) rather than hiring workers outright. This can free a company from having to manage directly such administrative tasks as employee payroll, health benefits, workers' compensation claims, and unemployment insurance. Apparently, however, licensure and registration requirements for businesses that offer first and secondary mortgages have made it difficult for small mortgage brokerages to lease employees from a PEO. Although the requirements for licensure and registration do not apply to a person who is an employee of only one licensee or registrant, a person leased from a PEO is an employee of the PEO and therefore not eligible for the exemption.

To address this situation, legislation was enacted in 2005 (Public Act 113) that amended the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA) to exempt from licensure under the act an individual who was an employee of a PEO if that individual solely acted as a residential mortgage originator for only one mortgage broker or lender. Though the legislation clarified how employees from PEOs were to be treated if hired under a license issued under the MBLSLA, it did not apply to employees from PEOs hired under a license issued under the Secondary Mortgage Loan Act.

Since the circumstances under which a residential mortgage originator works (those licensed or registered under the MBLSLA) or those under which a secondary mortgage loan originator works are similar, some feel that employees of PEOs leased by businesses regulated under the Secondary Mortgage Act should be able to enjoy the same exemption from licensure or registration under that act afforded to leased employees of PEOs under Public Act 113.

THE CONTENT OF THE BILL:

Senate Bill 290 would amend the Secondary Mortgage Loan Act to make its exemptions from licensing and registration provisions similar to exemptions already in the Mortgage Brokers, Lenders, and Servicing Act (as amended by Public Act 113 of 2005). The principal change is to add an exemption from licensure or registration for an individual who is an employee of a professional employer organization (PEO) and who is solely acting as a secondary mortgage loan originator of only one broker or lender.

The broker or lender would have to direct and control the activities of the individual under the act and be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under Section 6 of the act. (Under a PEO arrangement, generally, a company can lease employees from a PEO rather than hiring them directly.)

Currently, in order to act as a mortgage broker, lender, or servicer, Section 2 of the Secondary Mortgage Loan Act requires that a person register with or obtain a license from the Office of Financial and Insurance Services (OFIS). Under the act, acting as a broker, lender, or servicer, respectively, means that the person acts as a broker in connection with one or more secondary mortgage loans, makes or negotiates more than two secondary mortgage loans in a calendar year, or services more than 10 secondary mortgage loans in a calendar year. The act currently exempts from the licensure or registration requirement a person licensed under the Consumer Financial Services Act, a depository financial institution, or an exclusive broker and also exempts a natural person who is an employee of only one licensee or registrant.

Senate Bill 290 would revise Section 2 of the act (MCL 493.52) to instead specifically exempt a person from the registration or licensure requirements if one or more of the following applied:

- The person was solely performing services as an employee of only one broker, lender, or servicer.
- The person was an exclusive broker.
- The person was licensed under the Consumer Financial Services Act.
- The person acted as a lender but made or negotiated two or fewer secondary mortgage loans in a calendar year.
- The person acted as a servicer but serviced ten or fewer secondary mortgage loans in a calendar year.
- The person is an individual and an employee of a professional employer organization (PEO), as that term is defined in the Single Business Tax Act, solely acting as a secondary mortgage loan originator of only one broker or lender. The broker or lender would have to direct and control the activities of the individual under the act and be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under Section 6 of the act.

[Note: "Professional Employer Organization" would mean that term as defined in the Single Business Tax Act (MCL 208.4) — an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following: maintaining the right of direction and control of employees' work, although this responsibility may be shared with the other entity; paying the employees' wages and employment taxes out of its own accounts; reporting, collecting, and depositing state and federal employment taxes for the employees; and retaining the right to hire and fire employees.]

HOUSE COMMITTEE ACTION:

The House Committee on Banking and Financial Services reported the bill out of committee without any amendments. Some of the information in this analysis is derived from the analysis of the bill by the Senate Fiscal Agency dated 3-9-07.

BACKGROUND INFORMATION:

Currently, the Secondary Mortgage Loan Act (SMLA) requires individual loan officers to be licensed unless they are working as an employee of another licensed or registered entity. However, the SMLA does not define "employee." The Office of Financial and Insurance Services (OFIS) issued a bulletin in November 2003 in which it maintains that an employee is one who is issued a W-2 and who receives compensation from and is under the general control of a licensed or registered mortgage company. In the bulletin, OFIS stated that a loan officer that is leased by a mortgage company and paid by the leasing company is not an employee of the mortgage company.

ARGUMENTS:

For:

The bill would treat a PEO employee acting as a secondary mortgage loan originator for a mortgage broker or lender in the same manner as the act currently treats a direct employee of the firm. To ensure that the public is protected, the bill requires the mortgage broker or lender to direct and control the activities of the PEO employee for the purposes of the licensing act and for the mortgage broker or lender to assume financial responsibility for actions of the PEO employee that are covered by the proof of financial responsibility deposit that is required under the act. Supporters believe that professional employer organizations (PEO) can serve a useful purpose for lenders and brokers. The relationship between a PEO and a licensed (or registered) secondary mortgage company typically involve the PEO being responsible for certain human resource or personnel tasks. The PEO arrangement can also result in employees receiving benefits that a licensee or registrant otherwise could not provide. However, secondary mortgage brokers and lenders cannot use the PEO option at present because it would require PEO

employees to be licensed in circumstances in which the firm's direct employees would be exempt from licensure.

For:

The bill would place provisions into the Secondary Mortgage Act regarding the treatment of leased employees of professional employer organizations (PEOs) that are comparable with amendments to the Mortgage Brokers, Lenders, and Servicers Licensing Act made by Public Act 113 of 2005.

POSITIONS:

The Office of Insurance and Financial Services supports the bill. (4-17-07)

The Michigan Bankers Association supports the bill. (4-17-07)

Administaff supports the bill. (4-17-07)

ADP Total Source supports the bill. (4-17-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.