



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 290 (as passed by the Senate)
Sponsor: Senator Randy Richardville
Committee: Banking and Financial Institutions

(as enrolled)

Date Completed: 3-9-07

RATIONALE

In 2005, Public Act 113 amended the Mortgage Brokers, Lenders, and Servicers Licensing Act to exempt from its licensure and registration requirements an employee of a professional employer organization (PEO) solely acting as a residential mortgage originator of only one mortgage broker or mortgage lender. At that time, it was pointed out that some small businesses find it more beneficial to lease employees from PEOs than to hire workers directly. By using PEOs, companies spend less time managing some administrative aspects of business, such as employee payroll, health benefits, workers' compensation claims, and unemployment insurance. Before Public Act 113 was enacted, small mortgage brokerage operations were effectively prevented from leasing employees from a PEO due to the licensure and registration requirements of the Mortgage Brokers, Lenders, and Servicers Licensing Act.

Some people now believe that a comparable exemption should be enacted under the Secondary Mortgage Loan Act, in order to extend the same benefits to secondary mortgage lenders and brokers, as well as provide consistency between the two statutes.

CONTENT

The bill would amend the Secondary Mortgage Loan Act to exempt from the Act's licensure or registration requirements an individual employed by a professional employer organization and solely acting as a secondary mortgage loan originator of only one mortgage broker or lender.

In order to act as a mortgage broker, lender, or servicer, the Act requires that a person register with or obtain a license from the Office of Financial and Insurance Services (OFIS). An applicant for registration or licensure must provide proof of financial responsibility (as described below), and a license applicant must be investigated by 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 exempts a person from these requirements if one of the following applies:

- The person is a depository financial institution.
- The person is an exclusive broker.
- The person is an employee of only one licensed broker, lender, or servicer.
- The person is licensed under the Consumer Financial Services Act.

Under the bill, an individual who was an employee of a PEO and solely acting as a secondary mortgage loan originator of only one broker or lender would not be required to obtain a license or register as a broker, lender, or servicer. The broker or lender for whom the individual was working would be required to direct, control, and be responsible for the activities of the individual and assume responsibility for all of the individual's actions covered by the proof of financial responsibility deposit required of applicants for a license or registration.

The bill would define "professional employer organization" as the term is defined in the Single Business Tax Act (MCL 208.4), i.e., 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.
- Retaining the right to hire and fire employees.

(Under the Secondary Mortgage Loan Act, proof of financial responsibility must be provided by an applicant for a license or registration or renewal in one of the following amounts:

- For a person applying to act as a broker who receives funds from a prospective borrower before the closing of the secondary mortgage loan or who acts as a lender, \$25,000 plus \$20,000 for each exclusive broker through which the applicant does business, but not more than \$1.0 million.
- For a person applying to act as a servicer, \$125,000 plus \$20,000 for each exclusive broker through which the applicant conducts business, but not more than \$1.0 million.

Proof of financial responsibility may be shown through a corporate surety bond payable to the Commissioner of OFIS or through an irrevocable letter of credit upon which the applicant is the obligor.)

MCL 493.52

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate

Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Leasing employees through a PEO can be very beneficial to the owner or operator of a small business. Since the PEO, rather than the small business, is a leased worker's employer, the PEO is responsible for administrative tasks related to personnel. The small business, then, can focus on providing services or products to its customers, without having to deal with employment matters. An employee working solely for one licensee or registrant under the Secondary Mortgage Loan Act does not have to be licensed himself or herself, but is subject to OFIS regulation as an employee of the licensed or registered broker, lender, or servicer. The Act, however, does not grant such an exemption to a leased employee working for a secondary mortgage broker, lender, or servicer.

By specifically exempting a PEO employee acting solely as a secondary mortgage loan originator of only one mortgage broker or lender from the Act's licensure and registration requirements, the bill would allow a broker or lender to avail itself of the services of a PEO, if the broker or lender directed and controlled, and were responsible for, the PEO employee's activities and assumed responsibility for his or her actions. The bill would treat a PEO employee acting as a secondary mortgage loan originator of a licensee or registrant the same as the Act treats a direct employee of that licensee or registrant.

Supporting Argument

According to the Office of Financial and Insurance Services, the bill would give regulators a person to hold accountable for the actions and activities of an unlicensed or unregistered individual acting as a broker, lender, or servicer. By making brokers or lenders responsible for a leased employee of a PEO, the bill also would make brokers or lenders liable for any wrongdoing that occurred while that unlicensed and unregistered employee was acting as a broker, lender, or servicer. In addition, the PEO employee would be subject to the financial responsibility requirements of the Secondary Mortgage Loan Act.

Supporting Argument

The bill would reconcile the licensure and registration requirements in the Secondary Mortgage Loan Act with the requirements in the Mortgage Brokers, Lenders, and Servicers Licensing Act. There are no pertinent differences between the circumstances under which a residential mortgage originator works and those under which a secondary mortgage loan originator works, and there should be no difference between the ways in which they are regulated.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Pratt
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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.