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Senate Bill 290 (as introduced 2-28-07)
Sponsor: Senator Randy Richardville
Committee: Banking and Financial Institutions

Date Completed: 3-8-07

CONTENT

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

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 professional employer organization 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

Legislative Analyst: Craig Laurie

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Pratt
Maria Tyszkiewicz

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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.