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BILL ANALYSIS

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Senate Bills 462 through 465 (as enacted)
Sponsor: Senator Randy Richardville (S.B. 462)
Senator Tony Stamas (S.B. 463)
Senator Dennis Olshove (S.B. 464)
Senator Alan Sanborn (S.B. 465)
Senate Committee: Banking and Financial Institutions
House Committee: Banking and Financial Services

PUBLIC ACTS 75-78 of 2009

Date Completed: 11-22-10

CONTENT

Senate Bill 462 created the "Mortgage Loan Originator Licensing Act" to do the following:

- Prohibit an individual from engaging in the business of a mortgage loan originator regarding a dwelling without a license under the Act, with certain exceptions.
- Require a person applying for a license to undergo a criminal background check and submit certain personal history information.
- Require an applicant to meet specified prelicensing education requirements, pass a written test, and post a surety bond.
- Require a licensed mortgage loan originator to complete annual continuing education.
- Require the Commissioner of Financial and Insurance Regulation to establish a schedule of fees sufficient to pay the expected costs of administering and enforcing the Act, including an annual fee for each licensee.
- Require the fees to be deposited into the Mortgage Brokers, Lenders, and Servicers Licensing Act Fund.
- Provide that the Commissioner must require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry.
- Permit the Commissioner to suspend an individual's license or prohibit an

individual from being licensed under certain circumstances.

- Permit the Commissioner to conduct investigations or examinations for the purpose of initial licensing, license removal or suspension, or investigating violations or complaints.

Senate Bill 463 amended the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA) to require a loan officer to be registered under the Mortgage Loan Originator Licensing Act, rather than under the MBLSLA.

Senate Bill 464 amended the Secondary Mortgage Loan Act to require a secondary mortgage loan officer to be registered under the Mortgage Loan Originator Licensing Act, rather than under the Secondary Mortgage Loan Act.

Senate Bill 465 amended the Consumer Financial Services Act to prohibit a licensee acting as a mortgage broker or mortgage lender from employing or engaging an individual as a loan officer to originate mortgage loans unless he or she is a licensed loan officer under the Mortgage Loan Originator Licensing Act.

Senate Bill 462 was tie-barred to Senate Bills 463, 464, and 465, which were tie-barred to Senate Bill 462.

All of the bills took effect on July 31, 2009.

Senate Bill 462

License

Beginning July 31, 2010, an individual may not engage in the business of a mortgage loan originator (MLO) with respect to any dwelling located in the State without first obtaining and maintaining annually a license under the Mortgage Loan Originator Licensing Act, unless specifically exempt. Each licensed MLO must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (NMLSR).

A licensed mortgage loan originator's unique identifier must be shown clearly on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents, as established by rule or order of the Commissioner.

Each of the following is exempt from the Act:

- A registered MLO, when acting for a depository institution, a subsidiary of a depository institution that is owned and controlled by that institution and regulated by a Federal banking agency, or an institution regulated by the Farm Credit Administration.
- An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual.
- An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as his or her residence.

The Act also exempts a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to his or her representation of the client, unless the attorney is compensated by a lender, mortgage broker, or other mortgage loan originator.

A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless he or she obtains and maintains a license under the Act.

The Commissioner may establish licensing rules and interim procedures for licensure and the acceptance of applications, including expedited review and licensing procedures for previously registered or licensed individuals.

"Mortgage loan originator" means an individual who meets all of the following:

- For compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan.
- Is not an individual engaged solely as a loan processor or underwriter (except as provided regarding an independent contractor).
- Is not a person who only performs real estate brokerage activities and is licensed or registered under the laws of this State, unless the person is compensated by a lender, mortgage broker, or other MLO.
- Is not a person solely involved in extensions of credit relating to timeshare plans.

Licensing Deadline Extension

An individual engaged in the business of a mortgage loan originator is not required to obtain and maintain a license under the Act until July 31, 2011, if he or she is employed exclusively by a mortgage servicer; if he or she is authorized to perform loan modification activities concerning existing residential mortgage loans, and not to originate new residential mortgage loans or perform any other activities of an MLO, on behalf of that mortgage servicer; and if this extension of time is not inconsistent with any guideline, rule, regulation, or interpretative letter of the U.S. Department of Housing and Urban Development concerning the interpretation of the SAFE Act and its applicability to loan modification activities. (That Act is described in **BACKGROUND**, below.)

"Mortgage servicer" means a person who directly or indirectly services or offers to service residential mortgage loans. "Loan modification activities" means any of the following:

- Collecting or receiving payments on existing residential mortgage loans due

and owning to a mortgagor or mortgage servicer, when the borrower is in default or in reasonably foreseeable likelihood of default.

- Working with such a borrower to collect data concerning his or her residential mortgage loan or loans.
- Making any decisions necessary to modify certain terms of the residential mortgage loan or loans of a borrower described above, or otherwise to finalize collection through foreclosure.

License Application

An applicant for an MLO license must apply in a form prescribed by the Commissioner, and include with the application the required annual operating fee and the required criminal history check.

A person that employs or offers to employ, or engages or offers to engage as an agent, an individual as an MLO, to originate mortgage loans after July 31, 2010, must conduct a criminal history check of that individual. The applicant must submit the results of that check with his or her license application.

The individual who is the subject of a criminal history check must have his or her fingerprints taken by a law enforcement agency or by another qualified person, as determined by the Commissioner. The individual must pay the agency or person the fees required by the FBI, and request the agency or person performing the criminal history check to forward the fingerprints and fee to the FBI for a national criminal history check.

An applicant also must furnish to the NMLSR information concerning his or her identity, including the results of the criminal history check and the applicant's personal history and experience, including authorization for the NMLSR and the Commissioner to obtain both of the following concerning the applicant:

- An independent credit report from a consumer reporting agency.
- Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

Licensee Qualifications

The Commissioner may not issue a mortgage loan originator license unless he or she finds at least the following:

- The applicant is not subject to a prohibition order issued by the Commissioner under the MLO Licensing Act or under any of the financial licensing acts.
- The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction (although that the Commissioner may not consider a revocation that was formally vacated).
- The applicant has not been convicted of, or pleaded guilty or no contest to, a felony or misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement, forgery, a financial transaction, or securities, at any time before the date of the application; or any other felony within the preceding 10-year period.
- The applicant has completed the prelicensing education requirements.
- The applicant has passed a written test that meets the test requirement specified in the Act.
- The applicant has met the surety bond requirement.
- The applicant has demonstrated financial responsibility, character, and general fitness.

("Financial licensing acts" means that term as defined in the Consumer Financial Services Act, i.e., that Act, the Regulatory Loan Act, the Secondary Mortgage Loan Act, the Motor Vehicle Sales Finance Act, the Sale of Checks Act, the Money Transmission Services Act, and the MBLSLA.)

Prelicensing Education Requirement

An applicant for an MLO license must complete at least 20 hours of education, including the following:

- Three hours of Federal law and regulations.
- Three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues.
- Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

("Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.)

Only preclicensing education courses reviewed and approved by the NMLSR may be used to satisfy that requirement. Preclicensing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

If a person completes any of the above preclicensing education requirements that are approved by the NMLSR for any state, the Commissioner must accept those hours of education as credit toward completion of the preclicensing education requirement of the MLO Licensing Act.

Written Test Requirement

An applicant for licensure must pass a qualified written test developed by the NMLSR and administered by a test provider approved by the NMLSR based on reasonable standards.

A qualified written test must adequately measure the applicant's knowledge and comprehension in appropriate subject areas, including ethics and State and Federal law and regulation pertaining to mortgage origination and mortgage lending, including fraud, consumer protection, and fair lending issues and the nontraditional mortgage marketplace.

An approved provider may provide a test at the location of the applicant's employer, the location of any subsidiary or affiliate of the employer, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of an MLO.

An individual will not be considered to have passed a qualified written test unless he or she achieves a test score of 75% or more correct answers.

An individual may retake a test three consecutive times, if each retaking occurs at least 30 days after the preceding test. If an individual fails three consecutive tests, he or she must wait at least six months before taking the test again.

Surety Bond

Each mortgage loan originator must provide to the Commissioner or be covered by a surety bond that meets the requirements described below. If the MLO is an employee or exclusive agent of a person subject to the Act and that person has given the Commissioner a surety bond that satisfies the Act's requirements, the Commissioner may accept that surety bond in lieu of the MLO's surety bond obligation.

A surety bond must provide coverage for each mortgage loan originator covered by that bond in one of the amounts shown in Table 1, based on the sum of the principal amounts of mortgage loans the MLO closed in the preceding calendar year.

Table 1

Sum of the principal amounts of mortgage loans closed in the preceding calendar year	Required Surety Bond
Less than \$12.0 million	\$10,000
\$12.0 million or more but less than \$24.0 million	\$25,000
\$24.0 million or more	\$50,000

If an action is commenced on a bond, the Commissioner may require the filing of a new bond. If there is a recovery in that action, the MLO immediately must give the Commissioner a new surety bond that meets these requirements.

Annual License Renewal

The Commissioner must renew the license of a mortgage loan originator annually if all of the following are met before his or her current license expires:

- The MLO continues to meet the Act's minimum standards for licensure.
- He or she has satisfied the annual continuing education requirement.
- He or she has paid the required fee.

If an MLO fails to satisfy these requirements, his or her license will expire. Consistent with the standards established by the NMLSR, the Commissioner may adopt procedures for the reinstatement of expired licenses.

Continuing Education Requirements

A licensed mortgage loan originator must complete at least eight hours of education approved by the NMLSR, including at least the following:

- Three hours of Federal law and regulations.
- Two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues.
- Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Only continuing education courses reviewed and approved by the NMLSR, based on reasonable standards, may be used to satisfy these requirements.

An approved continuing education course may be provided by the MLO's employer, an entity affiliated with the originator by an agency contract, or a subsidiary or affiliate of that employer or entity. Continuing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

As a rule, a licensed mortgage loan originator may receive credit for a continuing education course only in the year in which the course is taken. A licensed MLO may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

A licensed MLO who is an approved instructor of an approved continuing education course may receive credit for his or her own annual continuing education requirement at the rate of two hours' credit for every one hour taught.

If a person successfully completes any continuing education requirements described above that are approved by the NMLSR for any state, the Commissioner must accept those hours of education as credit toward completion of the Act's continuing education requirements.

Fees

Each year, the Commissioner must establish a schedule of fees that are sufficient to pay, but not to exceed, the reasonably

anticipated costs of the Office of Financial and Insurance Regulation (OFIR) for administering and enforcing the Act. The fee schedule must include an annual fee for each licensed MLO in an amount established by the Commissioner.

For amending or reissuing an MLO originator license, the schedule must include a fee of not less than \$15 or more than \$200.

A licensed MLO must pay the actual travel, lodging, and meal expenses incurred by OFIR employees who travel out of State to conduct an examination or investigation of a licensed mortgage loan originator and the cost of independent investigators employed by the Commissioner to conduct an investigation.

Fees received under the Act are not refundable.

An MLO license renewal fee that is not received by December 31 will be subject to a penalty of \$25 for each day the fee is delinquent, up to a maximum of \$1,000.

Money received from fees must be deposited in the MBLSLA Fund.

NMLSR Participation

The Commissioner must require mortgage loan originators to be licensed and registered through the NMLSR. To carry out this requirement, the Commissioner is authorized to participate in the NMLSR and may by rule establish other requirements that he or she considers necessary, including any of the following:

- The payment of fees to apply for or renew licenses through the NMLSR.
- The setting or resetting as necessary of renewal or reporting dates.
- Amending or surrendering a license or any other activities that the Commissioner considers necessary for participation in the NMLSR.

The Commissioner also may establish requirements for the following background checks:

- The criminal history of a licensed MLO or license applicant through fingerprint or other databases.

- Information about a licensed MLO or license applicant in civil or administrative records.
- A licensed MLO's or applicant's credit history.
- Any other information about a licensed MLO or applicant considered necessary by the NMLSR.

The Commissioner must establish a process through which mortgage loan originators may challenge information entered into the NMLSR by the Commissioner.

Penalties; Fines; & Directives

To ensure the effective supervision and enforcement of the Act, the Commissioner may do any of the following, in a manner consistent with the Administrative Procedures Act (APA):

- Deny, suspend, revoke, condition, or decline to renew a license for a violation of the MLO Licensing Act, rules issued under the Act, or an order or directive entered under the Act.
- Deny, suspend, revoke, condition, or decline to renew a license if a licensee or applicant fails at any time to meet the requirements for licensure or license renewal or withholds information or makes a material misstatement in an application for a license or license renewal.
- Order restitution against a person for a violation of the Act.
- Impose a civil fine on a person subject to the Act, as described below.

The Commissioner may impose a civil fine on an MLO or other person subject to the Act if the Commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or other person has violated or failed to comply with a requirement of the Act, a rule promulgated under it, or an order issued under it.

The maximum fine for each violation or failure to comply is \$25,000. Each violation or failure to comply is a separate and distinct violation or failure.

The Commissioner also may issue any of the following orders or directives:

- Order or direct a person who is subject to the Act to cease and desist from

conducting business, including an immediate temporary order to cease and desist.

- Order or direct a person who is subject to the Act to cease any harmful activities or violations of the Act, including an immediate temporary order to cease and desist.
- Enter an immediate temporary order to cease business under a license or interim license issued under the Act, if the Commissioner determines that the license or interim license was granted erroneously or the licensee is currently in violation of the Act.
- Issue an order of suspension or prohibition from being licensed under the Act under certain circumstances (described below).
- Order or direct any other affirmative action that the Commissioner considers necessary.

Suspension or Prohibition for Fraud

If, in the opinion of the Commissioner, an individual has engaged in fraud, the Commissioner may serve on that person a written notice of intention to prohibit him or her from being licensed under the MLO Licensing Act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts.

The notice must state the facts supporting the prohibition and, except as otherwise provided, must set a hearing on a date within 60 days after the date of the notice. If the individual does not appear at the hearing, he or she will be considered to have consented to the issuance of an order in accordance with the notice.

If, after a hearing, the Commissioner finds that any of the grounds specified in the notice have been established, he or she may issue an order of suspension or prohibition. An order will be effective when served on an individual, and will remain in effect until it is stayed, modified, terminated, or set aside by the Commissioner or a reviewing court.

After five years from the date of an order, the individual subject to it may apply to the Commissioner to terminate the order.

If the Commissioner considers that an individual served a notice of intention poses an imminent threat of financial loss to customers, the Commissioner may serve an order suspending the individual from being employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts. Unless otherwise agreed to by the Commissioner and the individual served with the order, the Commissioner must hold a hearing to review the suspension between five and 20 days after the date of the notice.

If an individual is convicted of a felony involving fraud, dishonesty, or breach of trust, the Commissioner may issue an order suspending or prohibiting him or her from being licensed under the Act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee or registrant under any of the financial licensing acts.

The Commissioner must mail a copy of any notice or order issued under these provisions to the employer or principal of the individual subject to the notice or order.

Within 30 days after the Commissioner has notified the parties that the case has been submitted to him or her for final decision, the Commissioner must make a decision that includes findings of fact supporting the decision and serve on each party a copy of the decision and an order consistent with it.

Except for a consent order, a party to the proceeding or a person affected by an order may obtain a judicial review of the order. A consent order may be reviewed as provided under the APA.

The Commissioner may terminate or set aside any order except one under judicial review, which the Commissioner may terminate or set aside with the court's permission.

Unless ordered by the court, the commencement of proceedings for judicial review will not stay the Commissioner's order.

The Commissioner may apply to the Ingham County Circuit Court for the enforcement of any outstanding order.

An individual who violates a final order issued under these provisions will be guilty of a misdemeanor punishable by a maximum fine of \$5,000 or imprisonment for up to one year, or both.

As used in these provisions, "fraud" includes actionable fraud; actual or constructive fraud; criminal fraud; extrinsic or intrinsic fraud; fraud in the execution, inducement, or in law; or any other form of fraud.

The Commissioner regularly must report violations of the Act, enforcement actions, and other relevant information to the NMLSR, subject to the confidentiality provisions described below.

Confidentiality

The requirements of the Freedom of Information Act (FOIA) or any Federal law concerning the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under Federal or State law or rules of any Federal or State court concerning that information or material, will continue to apply after the information or material is disclosed to the NMLSR, except as otherwise provided in the SAFE Act.

Any such information or material may be shared with any state and Federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal law or FOIA.

For the purpose of these provisions, the Commissioner may enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies.

Any information that is subject to a privilege or confidentiality under these provisions is not subject to disclosure under any Federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal government or the respective state, and is not subject to subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless the person to

whom the information or material pertains waives that privilege.

These provisions do not apply to any information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a mortgage loan originator that is included in the NMLSR for access by the public.

Investigations

For purposes of initial licensing, license removal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with the MLO Licensing Act, the Commissioner may gain access to, receive, and use any books, accounts, records, files, documents, information, or evidence, including the following:

- Criminal, civil, and administrative history information.
- Personal history and experience information, including independent credit reports obtained from a consumer reporting agency.
- Any other document, information, or evidence the Commissioner considers relevant to the inquiry or investigation, regardless of its location, possession, control, or custody.

The Commissioner may direct, subpoena, or order the attendance of and examine under oath any person whose testimony may be required about the loans or the business or subject matter of that examination or investigation and may direct, subpoena, or order that person to produce books, accounts, records, files, and any other documents that the Commissioner considers relevant to the inquiry.

Each licensed MLO or other person subject to the Act must make available to the Commissioner on request the books and records relating to his or her or another person's operations. The Commissioner may interview relevant parties considering the business of the licensee or other person.

In making any examination or investigation authorized by the Act, the Commissioner may control access to any documents and records of the licensed MLO or other person

under examination or investigation, either by taking possession of the documents and records or by placing a person in exclusive charge of them where they usually are kept.

A licensed MLO or other person subject to investigation or examination may not knowingly withhold, abstract, remove, mutilate, destroy, or secrete from the Commissioner any books, records, computer records, or other information.

A licensed MLO who fails to submit to the Commissioner a report requested as part of an investigation will be subject to a penalty of \$25 for each day the report is delinquent, up to a maximum of \$1,000.

Prohibited Activities

A licensed mortgage loan originator may not do any of the following:

- Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by the Act.
- Intentionally, or due to gross or wanton negligence, repeatedly fail to provide borrowers with any material disclosures of information required by law.
- Directly or indirectly make a false, misleading, or deceptive advertisement regarding mortgage loans or their availability.
- Suppress or withhold from the Commissioner any information that the MLO possesses and that, if submitted, would have made him or her ineligible for licensure or license renewal at the time of application.
- Be convicted of, or plead no contest to, a misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement, forgery, a financial transaction, or securities, or any felony.
- Refuse or fail to furnish any information or make any report required by the Commissioner to issue or renew a license, or otherwise required by the Commissioner, within a reasonable period of time after he or she requests it.

Condition Reports

A licensed mortgage loan originator, or employer or principal of a licensed MLO on his or her behalf, must submit to the NMLSR reports of condition, in the form and

containing the information required by the NMLSR.

Action by Attorney General

If any fees or penalties are not paid when required, the Attorney General may maintain an action against the delinquent licensed MLO for their recovery together with interest and costs.

Senate Bill 463

Loan Officer

Under the MBLSLA, the Commissioner must exercise general supervision and control over mortgage brokers, mortgage lenders, and mortgage servicers doing business in the State. Previously, this also applied to loan officers originating mortgage loans in the State. The bill deleted this reference to loan officers, as well as references to loan officer registrants and their registration throughout the Act, and provisions for loan officer registrant fees.

The MBLSLA prohibits a person from acting as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the Act, except under certain circumstances. Under the bill, the licensure requirement does not apply if the person is providing loan officer services as an employee or agent of only one mortgage broker, lender, or servicer and is a licensed loan officer, if licensure is required under the Mortgage Loan Originator Licensing Act. (Previously, this applied if the person was registered as a loan officer.)

A loan officer may not receive any compensation for originating a mortgage loan unless he or she is a licensed loan officer (rather than a loan officer registrant).

The bill defines "licensed loan officer" as a loan officer who is licensed as a mortgage loan originator under the Mortgage Loan Originator Licensing Act.

Fees

The bill requires fees established under the Mortgage Loan Originator Licensing Act to be deposited into the MBLSLA Fund. Money in the Fund may be used to administer and enforce the MLO Licensing Act, as well as

the MBLSLA and the Secondary Mortgage Loan Act.

Penalty

Under the bill, a person who acts as a loan officer in the State and is not a licensed loan officer, if licensure is required under the MLO Licensing Act, is guilty of a misdemeanor punishable by a maximum fine of \$15,000, imprisonment for up to one year, or both. Previously, this penalty applied to a person who acted as a loan officer without a required loan officer registration under the MBLSLA.

Advisory Board Duties

The MBLSLA Act requires the Mortgage Industry Advisory Board to review and make recommendations concerning rules proposed under the Act or the Secondary Mortgage Loan Act. The bill also requires the Board to review and make recommendations concerning rules proposed under the MLO Licensing Act.

The Board must review and make recommendations regarding procedures for maintaining the confidentiality of personal identifying information and other information concerning licensees and registrants, and applicants for licensure or registration. Under the bill, this provision also applies to licensees or applicants for licensure under the MLO Licensing Act.

Employee Definition

The bill defines "employee" as an individual who meets both of the following:

- Has an employment relationship acknowledged by that individual and the licensee or registrant that engages the individual to originate mortgage loans.
- Is treated as an employee by the licensee or registrant that engages the individual to originate mortgage loans for compliance with Federal income tax laws.

Repeals

The bill repealed Sections 2a, 2b, 2c, and 22b of the MBLSLA. Those sections provided for the licensure and registration of loan officers under the MBLSLA, and established certain reporting requirements and

prohibited conduct for loan officer registrants.

Senate Bill 464

Secondary Mortgage Loan Officer

The Secondary Mortgage Loan Act requires the Commissioner to exercise general supervision and control over brokers, lenders, and servicers doing business in the State. Previously, this also applied to secondary mortgage loan officers originating secondary mortgage loans in the State. The bill deleted that reference to secondary mortgage loan officers, and deleted references to secondary mortgage loan officer registrants throughout the Act, as well as provisions for loan officer registrant fees.

Under the Act, a person generally may not act as broker, lender, or servicer without first obtaining a license or registering under the Act. The bill makes an exception for a person who is providing secondary mortgage loan officer services as an employee or agent of only one broker, lender, or servicer and is a licensed secondary mortgage loan officer, if licensure is required under the MLO Licensing Act. (Previously, the exception applied to a person who was registered as a secondary mortgage loan officer registrant if registration was required under Secondary Mortgage Loan Act.)

The bill defines "licensed secondary mortgage loan officer" as a secondary mortgage loan officer who is licensed as a mortgage loan originator under the MLO Licensing Act.

Penalty

Under the bill, a person who acts as a secondary mortgage loan officer in the State and is not a licensed secondary mortgage loan officer under the MLO Licensing Act is guilty of a misdemeanor punishable by a maximum fine of \$15,000, imprisonment for up to one year, or both. Previously, this penalty applied to a person who acted as a secondary mortgage loan officer without a secondary mortgage loan officer registration.

Employee Definition

The bill defines "employee" as an individual who meets both of the following:

- Has an employment relationship acknowledged by that individual and the licensee or registrant that engages the individual to originate secondary mortgage loans.
- Is treated as an employee by the licensee or registrant that engages the individual to originate secondary mortgage loans for compliance with Federal income tax laws.

Repeals

The bill repealed Sections 2a, 2b, 2c, and 26a of the Secondary Mortgage Loan Act. Those sections provided for the licensing and registration of secondary mortgage loan officers, and established certain reporting requirements and prohibited conduct for secondary mortgage loan officers.

Senate Bill 465

Under the bill, a licensee acting as a mortgage broker or mortgage lender may not employ or engage an individual as a loan officer to originate mortgage loans unless he or she is a licensed loan officer, as defined in the MBLSLA.

A licensee acting as a broker or lender also may not employ or engage an individual as a secondary loan officer to originate secondary mortgage loans unless he or she is a licensed secondary mortgage loan officer.

The bill defines "employ" as an engagement of an individual by a licensee that meets both of the following:

- The engagement is acknowledged by the licensee and the individual as an employment relationship.
- The licensee treats the individual as an employee for compliance with Federal income tax laws.

MCL 493.131-493.171 (S.B. 462)
445.1651a et al. (S.B. 463)
493.51 et al. (S.B. 464)
487.2059 (S.B. 465)

BACKGROUND

As part of the Housing and Economic Recovery Act of 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act) to require states to establish uniform regulations and minimum licensing requirements for mortgage loan originators. The SAFE Act also requires states to ensure that mortgage loan originators register with the Nationwide Mortgage Licensing System and Registry, to increase accountability and provide the ability to track individuals across state lines. Administered by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, the NMLSR provides each loan originator with a unique identification number. Under the SAFE Act, that number must be displayed on all documents related to the loan originator's business activities.

In addition, the SAFE Act requires loan originators to meet certain education requirements, pass a written test, submit to a criminal background check and credit check, and meet certain minimum asset requirements or post a surety bond, in addition to complying with other requirements. States were required to implement the Act's requirements by July 31, 2009, unless the U.S. Department of Housing and Urban Development granted an extension.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills adjusted Michigan's system of regulation of participants in the mortgage loan industry to bring it into compliance with Federal requirements in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which was included in the Federal Housing and Economic Recovery Act of 2008. The Commissioner of Financial and Insurance Regulation within the Department of Energy, Labor, and Economic Growth has the authority to establish license fees for mortgage loan originators at amounts sufficient to cover the cost of administering and enforcing the regulation; however, the fee amounts are constrained to the range permitted in Senate Bill 462. Revenue from the fees will be deposited in the Mortgage Brokers, Lenders, and Services Licensing Act Fund and used to pay the costs of regulating

the profession. Michigan already was regulating this industry; thus, the amendments are not expected to result in major changes to OFIR's administrative costs or revenue.

Any civil fines collected for violations of the MLO Licensing Act will be deposited into the General Fund. The amount of civil fines will depend on the frequency of violations and the level of the fine assessed.

The legislation will have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders will be convicted of violating a final order of suspension or prohibition from being licensed. Local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

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.