HB 202

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE
Revised

House Bill 202 (Delegates Opara and Faulkner)
(Task Force to Examine the Mortgage Lending Business)
Commerce and Government Matters

Consumer Credit - Mortgage Lending Business Reforms

This bill alters the regulation of the mortgage lending business by: (1) restricting to 10 the total points mortgage brokers and mortgage lenders may charge on secondary mortgages; (2) allowing a mortgage licensee to solicit and accept an application for a mortgage loan by mail, telephone, or at any location requested by the borrower; (3) restricting the closing to the lender's licensed location, the office of an attorney, or the office of the title insurer, unless the borrower requests in writing to close at another location due to the borrower's sickness; (4) increasing the scope of fraudulent mortgage lending activities which constitute a felony; (5) clarifying that the required surety bond is for the benefit of the mortgage loan borrower; (6) requiring the Commissioner of Financial Regulation to impose continuing education courses in order to renew a license by July 1, 2000; (7) clarifying that lenders who have some form of consumer lending license do not also need an installment loan license; and (8) altering the manner in which certain loan funds may be disbursed at settlement.

The bill requires the Financial Regulation Commission to report to the Senate Finance Committee and the House Commerce and Government Matters Committee on the continuing education requirements established pursuant to this bill prior to their adoption and implementation.

Fiscal Summary

State Effect: Minimal. The bill's criminal incarceration penalty is not expected to significantly affect State expenditures. Assuming the Consumer Protection Division receives fewer than 50 complaints as a result of this bill, any additional workload could be handled with existing resources.

Local Effect: Potential minimal impact on local revenues due to the applicable monetary penalty provision.

Small Business Effect: Meaningful.

Fiscal Analysis

Background: Chapter Law 588 of 1997 established a Task Force to Examine the Mortgage Lending Business to address the issues involved in mortgage lending reform. The task force had four meetings where it discussed mortgage fraud, the location to receive and sign secondary mortgage documents, the cap on secondary mortgage fees, and the fiduciary duty of a mortgage broker to a borrower. This bill arises out of the task force's recommendations.

State Expenditures: Under current law any mortgage lender who willfully misappropriates or fraudulently converts to the mortgage lender's own use more than $300 of the borrower's funds is guilty of a felony punishable by 15 years in prison or a $100,000 fine, or both. This bill broadens the scope of this fraud provision to apply not only to mortgage lenders but also employees or agents of a mortgage lender. This criminal incarceration penalty is not expected to significantly affect State operations or finances.

Local Revenues: Revenues could increase under the applicable monetary penalty (up to $100,000) for those cases heard in the circuit courts, depending upon the number of convictions and fines imposed.

Small Business Effect: There are approximately 2,000 mortgage lenders in the State and it is estimated that the majority of them are small businesses. Likewise, the majority of mortgage brokers in the State are small businesses. There are four reforms to mortgage lending business regulation provided for in this bill which could affect small businesses: (1) the 10-point cap on secondary mortgages; (2) the location where a licensee may receive an application and borrowers may sign secondary loan mortgage documents; (3) the felonious mortgage fraud provision; and (4) the Commissioner of Financial Regulation's authority to require continuing education courses.

This bill could have a positive impact on small mortgage lenders and brokers to the extent that competition is enhanced by adopting a 10-point combined cap on the amount that brokers and lenders may charge for a secondary mortgage. Under current law, first mortgage fees do not have a cap limit, and secondary mortgage fees are capped at two points for lenders and eight points for brokers. Although the total points charged to the consumer would remain the same, the number of transactions handled by Maryland loan providers could increase because mortgage lenders and brokers would have more choice in how to allocate the points among themselves.

This bill would positively affect small mortgage lending businesses by allowing mortgage licensees to solicit and accept a loan application by mail, telephone, or other electronic means, or at any location requested by the prospective borrower. Current law allows a licensee, at the borrower's prior request, to accept a loan application by mail, telephone, or at the borrower's residence. The bill authorizes the parties to use electronic communication and permits the loan application process to occur at any location requested by the borrower, not just the borrower's residence. Thus, this bill would have a positive effect on mortgage lending providers to the extent that it enhances competition by allowing mortgage lending businesses to better serve consumers by offering more options in securing a loan. This bill would not only make securing a loan more convenient to consumers, but the use of electronic communication could increase the efficient operation of small mortgage lending businesses.

This bill could negatively affect small mortgage lending businesses. For any mortgage lender who violates the provisions of this bill, increased fines and jail terms could be assessed. Further, this bill requires the Commissioner of Financial Regulation to require continuing education courses in order to qualify for a license. Thus, small mortgage businesses would incur the costs associated with obtaining additional education.

Information Sources: Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History:	First Reader - February 2, 1998
lnc	Revised - House Third Reader - March 27, 1998
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