SB 574

Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 574 (Senator Hughes)
Finance

Commercial Law - Credit Regulation - Home Mortgage Loans

This bill establishes a new regulatory scheme to govern home mortgage loans. The bill repeals certain current provisions governing home mortgage loans and establishes new provisions.

Fiscal Summary

State Effect: General fund expenditures could increase by approximately $414,800 in FY 2004, reflecting the bill's October 1, 2003 effective date. Out-year estimates reflect annualization and inflation. Revenues would not be affected.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	$0	$0	$0	$0	$0
GF Expenditure	414,800	447,700	473,700	501,800	532,300
Net Effect	($414,800)	($447,700)	($473,700)	($501,800)	($532,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Assuming the number of cases brought in the circuit court under the bill is small, any caseload increase could be handled with the existing resources of the Judiciary.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill prohibits a lender from financing a credit life, credit disability, credit property, credit unemployment, or other credit life or health insurance policy, debt cancellation, or debt suspension agreement through a home loan. The bill limits the late fee a lender may charge on a home loan to 4% of the past due payment. The lender may not charge the late fee until the payment is past due for at least 15 days and must notify the borrower that a late payment charge has been imposed.

The bill requires a lender to provide a borrower with the payoff balance of the loan within seven business days of the borrower's request. The lender may not charge a fee for providing the payoff balance for a home loan or for providing a release on prepayment of the loan.

The bill prohibits a lender making a "high-cost home loan" if the high-cost loan pays off all or part of an existing home loan and the borrower does not receive a reasonable and tangible net benefit from the new loan. Under the bill, a high-cost home loan is a loan that: (1) for a first lien the trigger rate is equal to or exceeds the weekly average yield on U.S. treasury securities adjusted to a constant maturity of one year by at least 6%; (2) for a subordinate mortgage or a mortgage secured solely by a security interest in a manufactured home, the trigger rate is equal to or exceeds the weekly average yield on U.S. treasury securities adjusted to a constant maturity of one year by at least 8%; or (3) the total points and fees, less discount points exceed at least 3% of the total loan amount for loans of $30,000 or more or the lesser of 6% or $900 for loans of less than $30,000.

A lender may not make a high-cost home loan if that loan refinances an existing home loan that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal or local government, or not-for-profit organization if: (1) the loan bears nonstandard payment terms beneficial to the borrower; and (2) the borrower will lose one or more of the benefits of the special mortgage. The bill also prohibits a lender from making a high-cost home loan unless the lender reasonably believes that the borrower or borrowers will be able to make the scheduled payments. A lender may not charge a borrower a fee to modify, renew, extend, or amend a high-cost home loan or to defer any payments under the terms of the loan. The bill restricts the conditions under which a lender may pay a contractor under a home improvement contract from the proceeds of a high-cost home loan.

A lender financing a high-cost home loan may not steer a borrower into a loan with a higher cost than the lowest cost category of loan for which the borrower could qualify with that lender or any of its affiliates. A broker arranging a high-cost home loan may not steer a borrower into a loan with a higher cost than the lowest cost category available to that borrower from the lenders with whom the broker regularly does business.

A high-cost home loan may not contain a provision that increases the interest rate after default or that permits the lender, in its sole discretion, to accelerate the indebtedness. Financing for fees and points under a high-cost loan is limited to 3% of the loan amount. A high-cost loan may not have a scheduled payment that is more than twice the average of earlier scheduled payments or contain terms wherein the outstanding principal balance may be increased because the regular payments do not cover the full amount of the loan and interest due. The bill restricts the terms the lender may include in the loan regarding disputes under the loan.

Violation of the bill is an unfair and deceptive trade practice. A person who has suffered damages for a violation of the bill may also bring a civil action, in which the court may award: (1) actual damages; (2) statutory damages equal to the finance charges plus 10% of the amount financed; (3) punitive damages for willful violation of the bill; and (4) attorney's fees for the complaining party. A lender that intentionally makes a home loan in violation of the bill is subject to forfeiture of all principal and interest on the loan. Loan terms that violate the bill are unenforceable. A lender acting in good faith will not be deemed to have violated the bill if the lender has made restitution and appropriate adjustments to the loan term: (1) within 20 days after the loan closes and prior to receiving notice from the borrower; or (2) within 60 days after closing and prior to receiving notice from the borrower if the lender's failure to comply resulted from a bona fide error.

Current Law: For certain covered loans, a lender must provide a borrower with a written recommendation that the borrower seek home buyer education or housing counseling and a list of agencies and organizations that provide such education or counseling. For certain covered loans, a lender may not make a home loan without due regard to the borrower's ability to repay the loan.

With limited exceptions, a lender may not finance, as part of a covered loan, single premium coverage for credit health, credit life, or credit involuntary unemployment insurance. However, the lender may require a borrower to insure and may collect the premiums paid for insurance on any real property securing the loan, the life of any person obligated on the loan, and the title of real property securing the loan.

For the purposes of these provisions, a "covered loan" is a mortgage that meets the criteria for a loan subject to the federal Home Ownership Equity Protection Act, as modified by Regulation Z, except that the comparison percentages for the mortgage loan is 1% less than those specified under the Home Ownership Equity Protection Act.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. The division may attempt conciliation, issue cease and desist orders, or seek action in court, including an injunction, to enforce the Consumer Protection Act. However, the Consumer Protection Act must be enforced by each agency within the scope of its authority. The Commissioner of Financial Regulation has general regulatory authority over mortgage lenders.

State Expenditures: The Commissioner of Financial Regulation currently oversees approximately 2,800 mortgage lenders. Of those, approximately 900 are located outside the State. The bill would increase the length and complexity of each mortgage lender examination performed by the Division of Financial Regulation under the commissioner's direction. The division currently examines mortgage lenders every three years and new companies within 18 months of licensure. General fund expenditures could increase by an estimated $414,800 in fiscal 2004, which accounts for the bill's October 1, 2003 effective date. This estimate reflects the cost of hiring eight financial examiners to examine mortgage lenders and handle complaints under the bill. It includes salaries, fringe benefits, one-time start-up costs (including examination software programming), and ongoing operating expenses (including examiner travel).

Salaries and Fringe Benefits	$303,300
Examination Software Reprogramming	50,000
Other Operating Expenses	61,500
Total FY 2004 State Expenditures	**$414,800**

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Small Business Effect: Many mortgage lenders are small businesses and would be subject to additional oversight by the Commissioner of Financial Regulation. These mortgage lenders could also experience a drop in interest income from mortgage loans as allowable interest rates on mortgage loans would be lower.

Additional Information

Prior Introductions: A similar bill, HB 1196, was introduced in the 2000 session and received an unfavorable report from the House Commerce and Government Matters Committee.

Cross File: None designated, although HB 864 is identical.

Information Source(s): Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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