




Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 342 (Substitute S-1 as passed by the Senate)
Senate Bill 343 (Substitute S-2 as passed by the Senate)
Senate Bill 356 (Substitute S-2 as passed by the Senate)
Senate Bill 432 (as passed by the Senate)
Sponsor: Senator John Pappageorge (S.B. 342 & 343)
Senator Randy Richardville (S.B. 356 & 432)
Committee: Banking and Financial Institutions

Date Completed: 5-11-07

RATIONALE

Home prices and selling rates are declining in parts of the State and many houses are selling for much less than homeowners and mortgage lenders would like. Reportedly, this has increased the pressure that some mortgage lenders apply to real estate appraisers to inflate a property's value and thereby increase the size of a mortgage loan and/or make it more likely to secure a real estate deal. Even if a real estate appraiser opposes the practice, apparently there is little he or she can do as lenders can propose one job to several appraisers and select an appraiser who is willing to report the desired value. Some people believe that inflated, coerced, and induced real estate appraisals harm citizens and the real estate market in Michigan. It has been suggested that coercion or inducement of real estate appraisers by mortgage lenders should be prohibited. It also has been suggested that the penalties for certain mortgage-related violations are outdated and should be changed.

- **Prohibit an appraiser from developing and communicating an appraisal that was the result of conditions set by a client or intended user in order to receive a predetermined appraised value.**
- **Revise criminal penalties and civil fines for violating the Mortgage Brokers, Lenders, and Servicers Licensing Act or the Secondary Mortgage Loan Act.**

Senate Bill 432 would amend the Code of Criminal Procedure to delete from the sentencing guidelines general violations of the Mortgage Brokers, Lenders, and Servicers Licensing Act and a licensing violation of the Secondary Mortgage Loan Act.

Senate Bills 342 (S-1), 343 (S-2) and 356 (S-2) are tie-barred to each other. Senate Bill 432 is tie-barred to Senate Bills 343 and 356. The bills are described below.

CONTENT

Senate Bills 342 (S-1), 343 (S-2), and 356 (S-2) would amend the Occupational Code, the Secondary Mortgage Loan Act, and the Mortgage Brokers, Lenders, and Servicers Licensing Act to do the following:

- **Prohibit a person from inducing or coercing an appraiser in order to receive a predetermined appraisal.**

Senate Bill 342 (S-1)

The bill would amend Article 26 (Real Estate Appraisers) of the Occupational Code to establish a misdemeanor penalty for a licensed appraiser who, in violation of standards adopted under Article 26, developed and communicated an appraisal used as an investment or as collateral for a loan in a real estate-related financial transaction, by developing and communicating that appraisal as a result of

the client's or intended user's doing either or both of the following:

- Setting preconditions on the outcome of the appraisal as a prerequisite for being selected to develop and communicate an appraisal or for obtaining future appraisal work.
- Representing or implying that payment for the development and communication of the appraisal was predicated upon attaining a desired minimum appraised value.

A licensee who violated this prohibition would be guilty of a misdemeanor punishable by a maximum fine of \$15,000 or imprisonment for up to one year, or both.

Senate Bill 343 (S-2)

The bill would amend the Secondary Mortgage Loan Act, which makes it a misdemeanor, punishable by a maximum fine of \$5,000 or imprisonment for up to three years, or both, for a person, association, nonprofit corporation, common law trust, joint stock company, limited liability company, or any other group of individuals, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or representative of the person or entity willfully or intentionally to engage in the business of making secondary mortgage loans without a license. Under the bill, the maximum fine would be \$15,000 and the maximum term of imprisonment would be one year, and the penalty also would apply to a person who willfully or intentionally coerced or induced a real estate appraiser to inflate the value of real property used as collateral for a secondary mortgage loan, including by doing either of the following:

- Representing or implying that a real estate appraiser would not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agreed in advance to a value, range of values, or minimum value for the real property.
- Representing or implying that a real estate appraiser would not be paid for an appraisal unless the appraiser agreed in advance to a value, range of values, or minimum value for the real property.

Currently, a person who violates the Act or counsels, aids, or abets in a violation is

liable for a maximum civil fine of \$1,000 for each offense, in addition to other penalties imposed by the Act. Under the bill, the person would be liable for a maximum civil fine of \$3,000 per violation, but not more than \$30,000 for a transaction resulting in more than one violation, plus the costs of investigation.

Senate Bill 356 (S-2)

The bill would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to make it a misdemeanor for a person, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or their representative acting on the authority of that person, willfully or intentionally to coerce or induce a real estate appraiser to inflate the value of real property used as collateral for a mortgage loan, including by doing either of the following:

- Representing or implying that a real estate appraiser would not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agreed in advance to a value, range of values, or minimum value for the real property.
- Representing or implying that a real estate appraiser would not be paid for an appraisal unless the appraiser agreed in advance to a value, range of values, or minimum value for the real property.

A violation would be punishable by a maximum fine of \$15,000 or imprisonment for up to one year, or both. This penalty also would apply to a person who willfully or intentionally violated existing provisions of the Act by engaging in the business of a mortgage broker, lender, or servicer without a license or registration; or by transferring or assigning a mortgage loan or a security in violation of the Act (as discussed in the description of Senate Bill 432, below). The current criminal penalty is a maximum fine of \$5,000 and/or imprisonment for up to three years.

Currently, the Commissioner of the Office of Financial and Insurance Services may assess a maximum civil fine of \$1,000 for each violation or \$10,000 for a transaction resulting in more than one violation, plus the costs of investigation, against a licensee or registrant who violates the Act. The bill would increase those amounts to \$3,000

and \$30,000, and would extend this and other administrative sanctions to someone who directly or indirectly counseled, aided, or abetted in a violation.

Senate Bill 432

The bill would amend the Code of Criminal Procedure to delete from the sentencing guidelines general violations of the Mortgage Brokers, Lenders, and Servicers Licensing Act and a licensing violation of the Secondary Mortgage Loan Act. Those violations are listed as Class H offenses against the public trust, with a statutory maximum penalty of three years' imprisonment.

Under the Mortgage Brokers, Lenders, and Servicers Licensing Act, a person who willfully or intentionally does any of the following is guilty of a misdemeanor:

- Engages in the business of a mortgage broker, mortgage lender, or mortgage servicer without a license or registration required under the Act.
- Transfers or assigns a mortgage loan or a security directly representing an interest in one or more mortgage loans before the disbursement of 75% or more of the proceeds of the mortgage loan to, or for the benefit of, the borrower, subject to various exceptions.
- Transfers or assigns a mortgage loan or a security representing an interest in one or more mortgage loans to an individual investor unless 1) the transfer or assignment is made through a broker dealer who is a member of the New York Stock Exchange; 2) the transfer or assignment is made through a broker-dealer who is registered under the Uniform Securities Act (and meets other criteria); 3) the transfer or assignment is made to a person who is believed to be a business or a knowledgeable person meeting certain net income or net worth standards; or 4) neither a transferor or assignor nor the transferee or assignee maintains its principal place of business in the State, and the transferee or assignee is not a resident of the State.

The Secondary Mortgage Loan Act makes it a misdemeanor for a person willfully or intentionally to engage in the business of making secondary mortgage loans without a license.

MCL 339.2635 (S.B. 342)
493.77 (S.B. 343)
445.1679 (S.B. 356)
777.14h & 777.14p (S.B. 432)

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

Evidently, some mortgage lenders make an appraisal job contingent on a preconditioned outcome of the appraisal, request that an appraiser review an undesirable appraised value, threaten to take future business to other appraisers if a predetermined appraised value is not met, or refuse to pay for appraisal services already rendered when a requested appraised value is not returned. Even though many appraisers strongly oppose coerced and inflated appraisals, it can be difficult to work as an appraiser in the current real estate market without acquiescing to the suggestions or demands of mortgage lenders. The bills would restore professionalism to the process and give appraisers legal backing to oppose the practice of inflating appraisals without fear of reprisal.

Supporting Argument

As house values have decreased, it has become easier to inflate real estate appraisals, which leads to mortgages that are higher than the actual value of a house. A person who owes more money than his or her house is worth often is unable to afford his or her mortgage payments, or even pay the balance after selling the house. By reducing the number of mortgages based on inflated property appraisals, the bills would help prevent situations that can result in foreclosure.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. To the extent that the bills decreased prison sentences, the

State would incur decreased costs of incarceration in State facilities, at an average annual saving of \$31,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander
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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.