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BILL ANALYSIS

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Senate Bill 639 (as introduced 6-23-05)  
Sponsor: Senator Tony Stamas  
Committee: Banking and Financial Institutions

Date Completed: 10-12-05

### **CONTENT**

**The bill would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to do all of the following:**

- Exempt an "exclusive broker" from the Act's licensure and registration requirements.**
- Require an applicant for a license to provide proof of financial responsibility for each exclusive broker through which the applicant conducted business regulated by the Act.**
- Require a licensee or registrant that used one or more exclusive brokers to enter into an indemnification agreement to protect borrowers from monetary damages.**
- Allow a mortgage broker, lender, or servicer to compensate a residential mortgage originator who was a mortgage broker exempt from licensure or registration.**

#### Exemption

The Act prohibits a person from acting as a mortgage broker, lender, or servicer without first obtaining a license or registering under the Act, unless one of the following applies:

- The person is solely performing services as an employee of only one mortgage broker, lender, or servicer.
- The Act specifically exempts the person from licensure or registration.
- The person is a class I licensee under the Consumer Financial Services Act (which authorizes the licensee to engage in all activities permitted under the Mortgage Brokers, Lenders, and Servicers Licensing Act; the Regulatory Loan Act; the Motor Vehicle Sales Finance Act; or the Sale of Checks Act).
- The person is an employee of a professional employer organization, solely acting as a residential mortgage originator of only one mortgage broker or lender.

The bill also would exempt a person who was an exclusive broker. "Exclusive broker" would mean an individual who brokers mortgage loans solely to one licensee or registrant and is compensated solely by that licensee or registrant; the individual also would have to be indemnified by the licensee or registrant as required by the bill. The bill specifies that the actions or practices of an exclusive broker in brokering a mortgage loan would be the actions or practices of the licensee or registrant.

#### Financial Responsibility

Except as otherwise provided in the Act, at the time of filing an application for a license or renewal of a license, the applicant must provide proof of financial responsibility in an amount specified in the Act.

The amount is for \$25,000 for an applicant who acts as a mortgage broker and who receives funds from a prospective borrower before the closing of the mortgage loan or who acts as a mortgage lender, and for \$125,000 for an applicant who acts as a mortgage servicer. Under the bill, if either type of applicant conducted business using one or more exclusive brokers, the proof of financial responsibility would have to include an additional \$20,000 for each exclusive broker through which the applicant conducted business regulated by the Act, up to a maximum of \$1.0 million.

#### Indemnification Agreement

The bill would require a licensee or registrant that conducted business regulated by the Act using one or more exclusive brokers to enter into an indemnification agreement, subject to the approval of the Commissioner of the Office of Financial and Insurance Services, to protect borrowers from monetary damages that could result from doing business with the exclusive brokers. The indemnification would have to be provided in the amount and form required for proof of financial responsibility, described above.

#### Residential Mortgage Originator

Unless a residential mortgage originator is otherwise licensed or registered under the Act, a residential mortgage originator may not receive, directly or indirectly, any compensation, commission, fee, points, or other remuneration or benefits from a mortgage broker, lender, or servicer other than the residential mortgage originator's employer. Similarly, unless a residential mortgage originator is otherwise licensed or registered under the Act, a mortgage broker, lender, or servicer may not pay, directly or indirectly, any compensation, commission, fee, points, or other remuneration or benefits to a residential mortgage originator, other than an employee of the mortgage broker, lender, or servicer. ("Residential mortgage originator" means a person who assists another person in obtaining a mortgage loan.)

Under the bill, those prohibitions against compensation would apply unless a residential mortgage originator was licensed or registered as a mortgage broker under the Act *or* was a mortgage broker exempt from the Act's licensing or registration requirements.

MCL 445.1651a

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would reduce revenue to the State by eliminating the license requirement for a type of mortgage broker. Staff from the Department of Labor and Economic Growth have estimated that this would reduce restricted revenue for administering financial regulatory programs by approximately \$225,000 annually. An unknown portion of this reduction would be offset by increased volume-based assessments on mortgage companies using exclusive brokers.

The bill would have no fiscal impact on local government.

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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.