

# Legislative Analysis

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## **PREDATORY LENDING: INFLUENCING APPRAISERS**

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### **House Bill 4054**

**Sponsor: Rep. Jeff Mayes**

### **House Bill 6148**

**Sponsor: Rep. Barbara Farrah**

### **Senate Bill 343**

**Sponsor: Sen. John Pappageorge**

### **Senate Bill 356**

**Sponsor: Sen. Randy Richardville**

**House Committee: Banking and Financial Services**

**Senate Committee: Banking and Financial Institutions**

**Complete to 5-23-08**

## **A SUMMARY OF HOUSE BILL 4054 AS INTRODUCED 1-22-07, HOUSE BILL 6148 AS INTRODUCED 5-21-08, AND SENATE BILLS 343 AND 356 AS PASSED BY THE SENATE 5-2-07**

The bills would amend various acts to prohibit coercing an appraiser in order to receive a predetermined appraisal, prohibit an appraiser from developing and communicating an appraisal set by a client in order to receive a predetermined appraised value, and revise criminal penalties and civil fines for violations of acts regulating mortgages and brokers, lenders, and servicers of mortgages.

House Bill 4054 would amend Article 26 (Real Estate Appraisers) of the Occupational Code (MCL 339.2635) to address instances when an appraisal was used as an investment or as collateral for a loan in a real estate-related financial transaction. The bill would establish a misdemeanor penalty for a licensed appraiser who, in violation of standards adopted under Article 26, developed and communicated such an 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 \$5,000 and/or imprisonment for up to three years.

Senate Bill 343 would amend the Secondary Mortgage Loan Act (MCL 493.77) to revise the criminal penalty for certain violations of the act. Currently, it is a misdemeanor, punishable by a maximum fine of \$5,000 or imprisonment for up to three years, or both, for a person to willfully or intentionally to engage in the business of making secondary mortgage loans without a license. (This applies to 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.)

Under the bill, the maximum fine would be \$15,000 and the maximum term of imprisonment would be one year. The penalty would also 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 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.

The bill is currently tie-barred to Senate Bills 342 (which is similar to House Bill 4054) and 356.

Senate Bill 356 would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1679) 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 is the current penalty that applies to a person who willfully or intentionally violates 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.

Currently, the Commissioner of the Office of Financial and Insurance Regulation 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.

The bill is tie-barred to Senate Bills 342 and 343.

House Bill 6148 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.19p) to reflect the changes to the maximum term of imprisonment for certain violations of the Secondary Mortgage Loan Act.

The bill is tie-barred to Senate Bills 343 and 356.

#### **FISCAL IMPACT:**

House Bill 4054 would have an indeterminate fiscal impact on the Department of Labor and Economic Growth. The Occupational Code (Article 26) currently imposes penalties for a violation of any of the standards for the development and communication of appraisals and, in Article 6, imposes penalties where an appraiser practices fraud, deceit, or dishonesty, or demonstrates a lack of good moral character, among other violations. The penalties imposed under Article 6 include, among others, license suspension or revocation and an administrative fine of up to \$10,000. The bill adds that in the specific instances where an appraiser makes an appraisal based on obtaining future work or securing payment, such an action would be a misdemeanor punishable by a fine of up to \$5,000 and/or imprisonment of up to three years. This would have an indeterminate impact on the corrections system, depending on sentencing practices. Fine revenue would accrue to the benefit of public libraries. There is no data to indicate how many violations would occur. However, in Fiscal Year 2006-07 the department issued 44 fines totaling \$189,600 against appraisers for various violations, although the exact reason is not known. The department collected \$43,250 in revenue from fines assessed in FY 2006-07. The department opened 248 new investigations during the fiscal year

Senate Bills 343 and 356 would appear to have no fiscal impact on the operations of the Office of Financial and Insurance Regulation regarding regulation of the mortgage industry under the Secondary Mortgage Act or the Mortgage Brokers, Lenders, and Servicers Licensing Act. The Consumer Mortgage Protection Act (2002 PA 660, MCL 445.1631 et seq.) already provides (1) a person, appraiser, or real estate agent shall not make, directly or indirectly, any false, deceptive, or misleading statement or

representation in connection with a mortgage loan, including the borrower's ability to qualify for a mortgage or the value of the dwelling used to secure repayment of the mortgage loan; (2) a lender shall not condition the payment of an appraisal based upon a predetermined value or the closing of a mortgage loan; and (3) a person shall not directly or indirectly compensate, coerce, or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of the dwelling used to secure repayment of the mortgage loan.

The bills could, however, increase revenue (consumer finance fees) for the Office of Financial and Insurance Regulation. In general, the bills triple the maximum amount of the fine that may be imposed for violations of the Secondary Mortgage Act or the MBLSL Act. The exact breakdown of the fines under the two acts is not known. However, if by tripling the maximum amount of the fine, the lesser amounts increase by the same rate, the bill could potentially triple the amount of fine revenue collected under the two mortgage acts. In FY 2006-07, secondary mortgage fines were \$36,725 and fines under the MBLSL Act were \$609,315. The five year averages (FYs 2003-2007) were \$72,421 and \$380,317, respectively. Additionally, the Legislature and Governor recently enacted legislation to regulate mortgage loan officers under the MBLSL Act, which, going forward, also affects potential fine revenue.

Under the two acts, the OFIR commissioner has authority to set a schedule of fees necessary to defray the costs of administering the two acts; the fees are driven, in part, by the appropriation made to OFIR and any carry forward revenue. A significant increase in fine revenue would exert a downward pressure on the fee schedule established by the commissioner. (Section 29 of the Secondary Mortgage License Act was amended by 2008 PA 71, which was part of the package of legislation regulating mortgage loan officers. Public Act 71 already increased the fine for willful and intentional violations of the MBLSL Act to \$15,000, as is also provided in SB 356. Presumably, a conflict substitute will be drafted to incorporate the amendments made to Section 29 by PA 71.) Additionally, Senate Bill 356 provides that the maximum prison sentence for willful or intentional violations of the MBLSL Act would be one year. Public Act 71 already reduced the maximum sentence from three years to one year. As a result, Senate Bill 356 would have no affect on the corrections system.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.