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BILL ANALYSIS



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Senate Bill 540 (as reported without amendment)  
Sponsor: Senator Alan Sanborn  
Committee: Banking and Financial Institutions

Date Completed: 6-28-05

### **RATIONALE**

Increasingly, many small businesses are finding it beneficial to lease employees from professional employer organizations (PEOs), rather than hiring workers outright. This can free a company from having to manage directly some administrative aspects of business, such as employee payroll, health benefits, workers' compensation claims, and unemployment insurance. Small mortgage brokerage operations are effectively prevented from leasing employees from a PEO, however, due to the licensure and registration requirements of the Mortgage Brokers, Lenders, and Servicers Licensing Act. Although those requirements do not apply to a person who is an employee of only one licensee or registrant (or is otherwise licensed or exempt from licensure), a person leased from a PEO is an employee of the PEO. To accommodate this situation, some people believe that a PEO employee working solely for one mortgage broker, lender, or servicer should be exempt from the Act's licensure and registration requirements.

### **CONTENT**

The bill would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to exempt an employee of a professional employer organization performing services as an agent of a mortgage broker, mortgage lender, or mortgage servicer from the Act's licensure or registration requirements. The bill also specifies that the mortgage broker, lender, or servicer would have the authority to direct and control the activities of an individual performing services under that provision and would have to comply with any requirements of the Act that applied to that individual.

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 bill would add to that list a person who was an employee of a PEO, solely performing services as an agent of only one mortgage broker, lender, or servicer.

"Professional employer organization" would mean that term as defined in the Single Business Tax Act (MCL 208.4). Under that Act, a PEO is an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

- Maintaining the right of direction and control of employees' work, although this

responsibility may be shared with the other entity.

- Paying the employees' wages and employment taxes out of its own accounts.
- Reporting, collecting, and depositing State and Federal employment taxes for the employees.
- Retaining the right to hire and fire employees.

MCL 445.1652

## **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**

Leasing employees through a PEO can be very beneficial to the owner or operator of a small business. Since the PEO, rather than the small business, is a leased worker's employer, the PEO is responsible for administrative tasks related to personnel. The small business, then, can focus on providing services or products to its customers, without having to deal with employment matters. Mortgage brokers, licensers, and servicers, however, are essentially precluded from contracting with a PEO for labor because a PEO's employees would have to comply with the Mortgage Brokers, Lenders, and Servicers Licensing Act's licensing and registration requirements. An employee working solely for one licensee or registrant under the Act does not have to be licensed himself or herself, but is subject to Office of Financial and Insurance Services (OFIS) regulation as an employee of a licensed or registered broker, lender, or servicer. The Act, however, does not grant such an exemption to a leased employee working for a mortgage broker, lender, or servicer.

By specifically exempting a PEO employee who solely performed services as an agent of only one mortgage broker, lender, or servicer from the Act's licensure and registration requirements, the bill would allow a licensee or registrant to avail itself of the services of a PEO, if the broker, lender, or servicer had the authority to direct and control the PEO employee's activities. The bill would treat a PEO employee acting as an agent of a licensee or registrant the same as

the Act treats a direct employee of that licensee or registrant.

**Response:** The bill should not refer to a PEO employee performing services as an "agent" of a mortgage company. That term is too broad and could be interpreted to encompass performing many different types of tasks. The term "agent" in the bill should be replaced with the title "residential mortgage originator". Also, the bill should define "professional employer organization" in the Mortgage Brokers, Lenders, and Servicers Licensing Act, rather than defining the term with reference to another statute. This would give OFIS clearer regulatory authority over PEO employees working for licensees and registrants under the Act. In addition, the bill should explicitly require a licensed or registered mortgage company to keep a copy of any contract with a PEO, and specifically authorize OFIS to review any such contract during the course of an examination or investigation of the company.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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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.