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BILL ANALYSIS



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Senate Bill 540 (as enrolled)
Sponsor: Senator Alan Sanborn
Committee: Banking and Financial Institutions

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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 acting as a residential mortgage originator of a mortgage broker or lender from the Act's licensure and registration requirements. The bill specifies that the mortgage broker or lender would have to direct and control the activities of a PEO employee, and be responsible for all activities of the individual and assume responsibility for the individual's actions that were covered by the proof of financial responsibility deposit required under the Act.

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 include in the exemptions a person who was an employee of a PEO, solely acting as a residential mortgage originator of only one mortgage broker or lender.

"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 acting solely as a residential mortgage originator of only one mortgage broker or lender from the Act's licensure and registration requirements, the bill would allow a broker or lender to avail itself of the services of a PEO, if the broker or lender directed and controlled, and were responsible for, the PEO employee's activities and assumed responsibility for his or her actions. The bill would treat a PEO employee acting as a residential mortgage

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

Response: 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.