HB07-1322

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL
FINAL FISCAL IMPACT

Drafting Number:	LLS 07-0288	**Date:**	July 13, 2007
Prime Sponsor(s):	Rep. Marshall Sen. Groff	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Gary J. Estenson (303-866-4976)

TITLE: CONCERNING MEASURES TO PREVENT MORTGAGE FRAUD, AND, IN CONNECTION THEREWITH, EXTENDING THE PROHIBITION AGAINST CERTAIN ACTS TO INCLUDE MORTGAGE LENDERS, MORTGAGE LOAN APPLICANTS, REAL ESTATE BROKERS, REAL ESTATE AGENTS, REAL ESTATE APPRAISERS, AND CLOSING AGENTS; PROHIBITING CERTAIN PRACTICES; AND CHANGING THE MENTAL STATE REQUIRED TO BE PROVEN AS AN ELEMENT OF A VIOLATION.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue		
TOTAL		
Cash Funds		
Mortgage Broker Licensing Cash Fund	1,920,000 + Fines	Fines
Fees — Background Checks	168,000	56,000
Fines Collection Cash Fund	<5,000	<5,000
Cash Funds Exempt - Pass Through Fees to FBI	211,200	70,400
State Expenditures		
TOTAL	$874,607	$728,265
Cash Funds		
Mortgage Broker Licensing Cash Fund	$495,561	$611,959
Fees — Background Check	167,846	45,906
Cash Funds Exempt - Pass Through Fees to FBI	211,200	70,400
FTE Position Change	8.0 FTE	8.3 FTE
Effective Date: The bill was signed by the Governor and became law on June 1, 2007.		
Appropriation Summary for FY 2007-2008: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

NOTE: During the 2007 legislative session, the General Assembly passed SB 07-203, SB 07-085, SB 07-216, and HB 07-1322. All four bills regulate persons involved in mortgage loan transactions. While each creates separate regulatory requirements, some revenue and expenditures indicated for HB 07-1322 are the same as those indicated in the fiscal notes for the other bills. Thus, the total fiscal impact of all four bills cannot be determined by adding together the fiscal notes for these bills. The combined impact of these bills will be reconciled during the supplemental appropriations process.

Summary of Legislation

The bill expands the Mortgage Broker Licensing Act by regulating the professional behavior of mortgage brokers and other parties involved in real estate transactions.

Colorado Consumer Protection Act - Deceptive Trade Practices. A mortgage broker engages in deceptive trade practices in violation of the Colorado Consumer Protection Act (CCPA) if he or she does not act in good faith or does not attempt to understand the borrower's financial status prior to recommending, brokering, or originating a loan.

Prohibitions for Mortgage Brokers, Real Property Owners, and Financial Institutions. In addition to prohibiting deceptive trade practices, the bill prohibits mortgage brokers, owners of real property, and financial institutions from:

- acting to defraud or mislead borrowers or lenders, or fraudulently obtaining property;
- soliciting or entering into a contract that allows a fee for specific interest rate, points, or other financing terms or for using "best efforts" to obtain a loan on behalf of a borrower;
- failing to disclose fees, costs, or financing terms to a loan applicant or noninstitutional investor;
- making false or deceptive statements regarding interest rates, points, or financing terms, engaging in "bait and switch" tactics, or knowingly and willfully omitting material facts during investigations conducted by the DRE;
- advertising interest rates without conspicuously disclosing the annual percentage rate;
- failing to comply with federal lending, credit, and real estate laws;
- collecting, charging or attempting to collect or charge prohibited fees; and
- failing to pay closing costs to third-party providers.

Prohibitions for Mortgage Brokers Only. A mortgage broker who also acts as loan originator cannot act as a real estate broker or salesperson unless he or she discloses all material features of a loan and separately maintains mortgage brokering and real estate brokering records. A mortgage broker cannot solicit or contract with a prospective borrower without a written correspondent or loan broker agreement with a lender. A mortgage broker cannot receive compensation connected with a residential mortgage loan unless:

- the borrower obtains a loan from a lender based on the terms agreed to by the borrower and mortgage broker;
- the mortgage broker has obtained written commitment from the lender that a loan will be offered based on terms agreed to by the broker and the borrower, or the borrower fails to close on a loan; or
- the fee is for third-party goods or services.

State Revenue

Total state revenue will increase by $2,299,200 in FY 2007-08 and by $126,400 in FY 2008-09. Revenue components are discussed below.

Licensing Fees. The bill eliminates the current exemption for mortgage brokers operating under the authority of the Federal Housing Administration (FHA). The DRE is required to set the license fee at an amount to cover direct and indirect expenditures associated with administering the Mortgage Broker Licensing Act. The current fee is $200 and the fiscal note estimates that the fee will remain the same in FY 2007-08. Therefore, the addition of an estimated 9,600 mortgage brokers will generate an additional $1,920,000 in FY 2007-08. Since licensess are valid for a three (3) years, no additional fee revenue is anticipated until FY 2010-11. Consequently, FY 2007-08 fee revenue will be used to fund HB 07-1322 for three (3) fiscal years.

Administrative Fines. The director of the DRE may investigate any mortgage broker for violations of the Mortgage Broker Licensing Act. A person violating the act is subject to an administrative fine of up to $1,000 per violation in the first instance and between $1,000 and $2,000 per violation for second and subsequent violations. Any administrative fines collected will be credited to the Mortgage Broker Licensing Cash Fund. While compliance with the bill's requirements is expected to be high, some fine revenue is expected. However, the increase in fine revenue cannot be quantified.

Criminal Penalties. Under current law, brokering a mortgage without registering is a Class 1 misdemeanor. By removing the FHA exemption, 9,600 additional mortgage brokers will be subject to this misdemeanor. Per Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of $500 to $5,000, or both. Fine revenue not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration or imposing a fine, the impact to state revenue cannot be determined. However, a minimal amount of fine revenue (< $5,000 per year) is assumed under the bill.

Department of Public Safety, Colorado Bureau of Investigation (CBI). The CBI will receive $379,200 in FY 2007-08 and $126,400 in FY 2008-09 from mortgage brokers for criminal history checks. Criminal history checks are $39.50 each and will be done on 9,600 mortgage brokers in FY 2007-08 currently operating under an FHA exemption. Of the $39.50, $22.00 passes through to the FBI to cross-check criminal histories against the national criminal database. The total pass through amount to the FBI is $211,200 in FY 2007-08. The remaining $17.50 is retained by the CBI to cover background check costs, totaling $168,000 in FY 2007-08.

State Expenditures

Total state expenditures will increase by $792,849 and 8.0 FTE in FY 2007-08 and by $640,655 and 8.3 FTE in FY 2008-09. Cost components are discussed below.

Department of Regulatory Agencies, Division of Real Estate (DRE). Currently, the DRE must ensure that 4,800 mortgage brokers are properly registered. By removing the FHA exemption, the fiscal note estimates that an additional 9,600 mortgage brokers will require licenses, bringing total licensure to 14,400 mortgage brokers. The DRE will also need personnel to investigate mortgage broker compliance with loan product offerings and consumer disclosures. Additionally, staff will be needed to conduct revocation proceedings against brokers who have:

- had a license, registration, or certification revoked or suspended within the last five (5) years for fraud, material misrepresentation, theft, or breach of a fiduciary duty;
- been enjoined within the last five (5) years from engaging in deceptive conduct related to mortgage loan brokering; or
- engaged in mortgage brokering activities prohibited by the bill.

Finally, Department of Law legal services will be needed to assist in rule promulgation and represent the DRE in administrative disciplinary proceedings against mortgage brokers. Legal services are billed at a rate of $67.77 per hour. Total legal service hours needed in FY 2007-08 are estimated at 1,750 hours (0.8 FTE) due to inherent delays in administrative actions in the first year. FY 2008-09 legal services are estimated to increase to 3,450 hours (1.9 FTE). Table 1 summarizes DRE expenditures

Table 1. Division of Real Estate Expenditures Under HB07-1322.

Cost Components	**FY 2007-08**	**FY 2008-09**
Personal Services	$104,618	$128,737
FTE	2.5	3.0
Operating Expenses and Capital Outlay	7,260	4,505
Legal Services	118,598	233,807
TOTAL	**$230,476**	**$367,049**

Department of Law. The bill adds mortgage lenders, mortgage loan applicants, real estate brokers, real estate agents, real estate appraisers, and appraisers to the list of parties that may be issued an injunction to cease originating mortgage loans by the attorney general or a district attorney. Additionally, mortgage brokers will also be subject to sanctions under the Colorado Protection Consequently, the Department of Law will require staff to investigate and prosecute civil allegations of deceptive trades practices. Finally, miscellaneous costs will be incurred for litigation expenses and travel costs. Table 2 lists total expenditures for the Department of Law to enforce CCPA violations.

Table 2. Department of Law Expenditures Under HB07-1322.		
Cost Components*	**FY 2007-08**	**FY 2008-09**
Personal Services	$220,472	$220,472
FTE	3.0	3.0
Operating Expenses and Capital Outlay	24,675	4,500
Leased Space	8,250	8,250
Vehicle	5,688	5,688
Litigation	6,000	6,000
TOTAL	**$265,085**	**$244,910**

*** *Note: The Department of Law requires an additional 0.8 FTE in FY 2007-08 and 1.7 FTE in FY 2008-09 for legal services provided to the Division of Real Estate. The discussion of DRE costs identifies the need.***

Department of Public Safety, CBI. For FY 2007-08, the CBI, requires $167,846 and 1.7 FTE for criminal history checks. The CBI will need staff to process and maintain fingerprint records, search Colorado databases for applicant criminal history, and submit fingerprints to the FBI. Additionally, staff will require training in proper fingerprinting techniques, supplies, and office equipment. These expenditures were not included in the previous fiscal note. In FY 2007-08, the number of background checks is estimated at 9,600. Since most background checks will occur during the first year of the program, the CBI will not require additional staff in FY 2008-09. Finally, of the $379,200 collected from mortgage brokers for background checks, $211,200 will pass through to the FBI to cross-check applicants with the national criminal database.

Judicial Branch. Because the bill increases the number of persons subject to mortgage broker laws and regulations and expands violations to include penalties under the CCPA, the number of civil case filings may increase. However, any caseload increase cannot be quantified at this time.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program.

- group health, life and dental insurance
- inflation indices
- amortization equalization disbursements
- supplemental amortization equalization disbursements
- short-term disability
- leased space
- indirect costs

Local Government Impact

The bill may increase civil enforcement responsibilities for district attorneys under the CCPA. Local governments are responsible for funding the majority of the costs associated with district attorney offices. However, since civil cases will be spread out among numerous district attorney offices, costs to local governments are expected to be minimal.

The penalty for a class 1 misdemeanor is six to 18 months imprisonment in a county jail, a fine of $500 to $5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from $45 to $50 per day in smaller rural jails to $62 to $65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of $48.96 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

State Appropriations

The fiscal note indicates the following department appropriations for FY 2007-08:

Regulatory Agencies	$ 495,561	Total and 2.5 FTE
	495,561	Cash Funds - Mortgage Broker Licensing Cash Fund*
Law	$ 383,683	Total and 3.8 FTE
	383,683	Cash Funds Exempt Transfer - Mortgage Licensing Broker Cash Fund*
Public Safety	$ 297,288	Total and 1.7 FTE
	167,846	Cash Funds
	211,200	Cash Funds Exempt Pass Through

* *The cash funds exempt transfer to the Department of Law is included in the Department of Regulatory Agencies total.*

Departments Contacted

Regulatory Agencies	Public Safety	Law
Personnel and Administration	District Attorneys	