



*Colorado Legislative Council Staff Fiscal Note*  
**STATE and LOCAL  
 FISCAL IMPACT**

**Drafting Number:** LLS 07-0823

**Date:** April 4, 2007

**Prime Sponsor(s):** Sen. Veiga

**Bill Status:** Senate Business, Labor, and Technology

**Fiscal Analyst:** David Porter (303-866-4375)

**TITLE:** CONCERNING ADDITIONAL CONSUMER PROTECTIONS IN RESIDENTIAL MORTGAGE LOAN TRANSACTIONS.

<b>Fiscal Impact Summary</b>	<b>FY 2007-2008</b>	<b>FY 2008-2009</b>
<b>State Revenue</b>		
General Fund	Fines	Fines
<b>State Expenditures</b>		
General Fund	\$ 206,920	\$ 203,915
Mortgage Broker Cash Fund	167,157	235,696
<b>FTE Position Change</b>	4.9 FTE	5.8 FTE
<b>Effective Date:</b> July 1, 2007.		
<b>Appropriation Summary for FY 2007-2008:</b> See State Appropriations section.		
<b>Local Government Impact:</b> Enforcement activities.		

**Summary of Legislation**

Under SB07-216, mortgage brokers have a duty to act in good faith and fair dealing in all communications and transactions with a borrower. To fulfill this obligation, brokers must not influence a borrower into a loan that does not benefit the borrower and must not commit any unconscionable acts. Failing to act in good faith and fair dealing is a deceptive trade practice in violation of the Colorado Consumer Protection Act (CCPA). The bill identifies 15 unconscionable acts that generally involve a situation where a loan is brokered in a manner that takes advantage of the loan process to the detriment of the borrower, the bank, or both. The legal standard to prove unconscionability is that the mortgage broker “knowingly” committed, assisted, or facilitated the commission of an unlawful brokering activity.

Additionally, SB07-216 requires the Banking Board and the Division of Real Estate (DRE), both in the Department of Regulatory Agencies, to adopt rules for the marketing of non-traditional mortgages. The rules must incorporate the suggestions of the “Interagency Guidance on Nontraditional Mortgage Product Risks” issued by the federal Department of the Treasury.

## **State Revenue**

**Civil Penalties.** New deceptive trade practices for mortgage brokering are enforced under the CCPA. Civil penalties under the CCPA are up to \$2,000 per violation or up to \$10,000 per violation if the victim is over the age of 60. While compliance with the bill's requirements is expected to be high, moderate fine revenue is expected. However, the increase in fine revenue cannot be quantified. Fine revenue is credited to the General Fund.

## **State Expenditures**

Total state expenditures will increase by \$374,077 and 4.5 FTE in FY 2007-08 and \$439,611 and 5.0 FTE in FY 2008-09. Cost components are discussed below.

**Background.** HB06-1161 initiated the registration of mortgage brokers and capped fees at \$200. At the time of program implementation, the DRE's cost and registrant estimates required fees to be set at the maximum amount (\$200). However, the actual number of registrants was substantially higher than anticipated, resulting in three-year excess revenue estimated at \$717,000 in the Mortgage Broker Cash Fund. For the purposes of this fiscal note, excess revenue is used as a source of funding for the program changes. As the department is unable to adjust fees upward to meet additional costs, any costs above the \$717,000 must be funded through an alternate means. As a result, this fiscal note assumes the General Fund will be required to partially fund costs in the Attorney General's office.

Note, the revenue estimates do not build in inflationary costs and are highly dependent on the number of mortgage brokers who renew in FY 2009-10.

**Department of Regulatory Agencies, Division of Real Estate.** Currently, the DRE must ensure that 4,800 mortgage brokers are properly registered. By the end of FY 2006-07, the division anticipates 5,500 brokers will be registered. The new violations of the CCPA are anticipated to generate consumer complaints. The department requires compliance investigators at 1.5 FTE in FY 2007-08 and 2.0 FTE in FY 2008-09 to investigate and take disciplinary actions against violators.

Legal services will be needed to assist in rule promulgation related to the marketing of non-traditional loans and to represent the DRE in administrative disciplinary proceedings against mortgage brokers. Legal services are billed at a rate of \$67.77 per hour. Total hours are estimated at 715 hours (0.4 FTE) in FY 2007-08 and 1,405 (0.8 FTE) in FY 2008-09. Table 1 summarizes DRE costs under the bill.

<b>Table 1. Division of Real Estate Expenditures Under SB07-216.</b>		
<b>Cost Components</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>
Personal Services	\$72,357	\$96,476
FTE	1.5	2.0
Operating Expenses and Capital Outlay	6,344	4,003
Legal Services	48,456	95,217
<b>Total - Mortgage Broker Cash Fund</b>	<b>\$127,157</b>	<b>\$195,696</b>

*Department of Law.* The bill adds unconscionable actions and the duty of good faith and fair dealing to the list of deceptive trade practices under the CCPA. Consequently, the department will require 2.0 FTE investigators and 1.0 FTE attorney to investigate and prosecute civil allegations of these new violations. Investigations and prosecutions under the CCPA are complex and most cases require extensive pleadings, discovery, and lengthy trials. Lease space will be needed to house new staff. Finally, miscellaneous costs will be incurred for litigation expenses and travel costs. Table 2 lists these costs.

<b>Table 2. Department of Law Expenditures Under SB07-216.</b>		
<b>Cost Components</b>	<b>FY 2007-08</b>	<b>FY 2008-09</b>
Personal Services	\$220,472	\$220,472
FTE	3.0	3.0
Operating Expenses and Capital Outlay	10,510	7,505
Leased Space	8,250	8,250
Miscellaneous	7,688	7,688
<b>Total</b>	<b>\$246,920</b>	<b>\$243,915</b>
<b>Less Excess Mortgage Broker Revenue</b>	<b><u>40,000</u></b>	<b><u>40,000</u></b>
<b>Total - General Fund</b>	<b>\$206,920</b>	<b>\$203,915</b>

Note that the Department of Law requires additional FTE authorization of 0.4 FTE in FY 2007-08 and 0.8 FTE in FY 2008-09 for legal services provided to the DRE. The discussion of DRE costs identifies this need.

*Department of Personnel and Administration (DPA).* The bill may increase the number of administrative hearings in the DPA, Office of Administrative Courts for license denial or disciplinary actions against mortgage brokers. However, this bill alone does not generate the need for more administrative law judges. Should a number of bills pass this session and significantly impact the DPA, it is assumed that any additional resources will be addressed through the annual budget process.

**Judicial Branch.** Because the bill expands deceptive trade practices under the CCPA, the number of civil case filings may increase. However, the caseload 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**

**Civil and Criminal Enforcement.** The bill may increase civil and criminal 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 and criminal cases will be spread out among numerous district attorney offices, costs to local governments are expected to be minimal.

**State Appropriations**

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

Regulatory Agencies	<u>\$ 167,157</u>	Total and 1.5 FTE
	167,157	Cash Funds - Mortgage Broker Cash Fund
Law	<u>\$ 246,920</u>	Total and 3.4 FTE
	206,920	General Fund
	88,456	Cash Funds Exempt Transfer from DORA

**Departments Contacted**

Regulatory Agencies	Law
Judicial	Personnel and Administration
District Attorneys	