

Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
REVISED FISCAL IMPACT
 (Replaces fiscal note dated April 4, 2007)

Drafting Number: LLS 07-0823
Prime Sponsor(s): Sen. Veiga

Date: April 23, 2007
Bill Status: Senate 2nd Reading
Fiscal Analyst: David Porter (303-866-4375)

TITLE: CONCERNING ADDITIONAL CONSUMER PROTECTIONS IN RESIDENTIAL MORTGAGE LOAN TRANSACTIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

| Fiscal Impact Summary | FY 2007-2008 | FY 2008-2009 |
|--|--------------|--------------|
| State Revenue | | |
| General Fund | Fines | Fines |
| Mortgage Broker Cash Fund | \$ 45,000 | \$ 45,000 |
| State Expenditures | | |
| Mortgage Broker Cash Fund | \$ 392,242 | \$ 440,606 |
| FTE Position Change | 4.9 FTE | 5.8 FTE |
| Effective Date: July 1, 2007. | | |
| Appropriation Summary for FY 2007-2008: See State Appropriations section. | | |
| Local Government Impact: Enforcement activities. | | |

Summary of Legislation

SB07-216, as amended by the Senate Appropriations Committee, adds a deceptive trade practice to the Colorado Consumer Protection Act (CCPA). Mortgage brokers have a duty to act in good faith and fair dealing in all communications and transactions with a borrower or they violate the CCPA. To fulfill this obligation, brokers must not influence a borrower into a loan that does not benefit the borrower, provide credit based predominantly on the value of consumer credit, or provide a loan that the consumer is not likely to repay.

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.

Finally, the bill removes the \$200 cap on mortgage broker registration fees.

State Revenue

Total state revenue is \$45,000 in FY 2007-08 and \$45,000 in FY 2008-09. Revenue is primarily to the Department of Regulatory Agencies, Division of Registration, from an increase in fees charged to mortgage brokers. Fees are discussed in greater detail in the section that follows.

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.

Fee Impact on Mortgage Brokers

Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 below identifies the fee impact of this bill.

| Table 1. Fee Impact on Mortgage Brokers | | | | | |
|--|--------------------|---------------------|-------------------|------------------------|-------------------------|
| Type of Fee | Current Fee | Proposed Fee | Fee Change | Number Affected | Total Fee Impact |
| FY 2007-08 Mortgage Broker Registration | \$200 | \$350 | \$150 | 300 | \$45,000 |
| FY 2008-09 Mortgage Broker Registration | \$200 | \$350 | \$150 | 300 | \$45,000 |
| FY 2009-10 Mortgage Broker Registration | \$200 | \$350 | \$150 | 5,500 | \$825,000 |
| THREE-YEAR TOTAL | | | | | \$915,000 |

The increased fees will be set to offset the direct and indirect costs of this bill and take into account the unexpectedly large number of mortgage brokers that registered with the division. Fees are set for a three-year registration cycle.

State Expenditures

Total state expenditures will increase by \$392,242 and 4.9 FTE in FY 2007-08 and \$440,606 and 5.8 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. Remaining costs will be paid using fee increases.

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 2 summarizes DRE costs under the bill.

| Table 2. Division of Real Estate Expenditures Under SB07-216. | | |
|--|-------------------|-------------------|
| Cost Components | FY 2007-08 | FY 2008-09 |
| 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 |
| Total - Mortgage Broker Cash Fund | \$127,157 | \$195,696 |

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. Leased space will be needed to house new staff. Finally, miscellaneous costs will be incurred for litigation expenses and travel costs. Table 3 lists these costs.

| Table 3. Department of Law Expenditures Under SB07-216. | | |
|--|-------------------|-------------------|
| 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 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 that the Department of Regulatory Agencies requires a \$392,242 and 1.5 FTE appropriation from the Mortgage Broker Registration Cash Fund in FY 2007-08. Of this amount, the Department of Law requires a \$311,846 cash funds exempt appropriation and 3.4 FTE.

Departments Contacted

Regulatory Agencies
Judicial
District Attorneys

Law
Personnel and Administration