

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session

STAFF MEASURE SUMMARY

Senate Committee On Business and Transportation

Fiscal: Fiscal impact issued

Revenue: No Revenue Impact

Action Date: 04/20/15

Action: Do Pass With Different Amendments. (Printed A-Eng Minority) Request
Referral To Ways And Means.

Meeting Dates: 03/18, 04/20

Signers of the Report: Sen. Fred Girod, Sen. Chuck Thomsen

Prepared By: James LaBar, Committee Administrator

WHAT THE MEASURE DOES:

Requires mortgage loan servicers to obtain license or endorsement and requires other persons that engage in business as mortgage loan servicers to obtain endorsement. Specifies considerations Director of Department of Consumer and Business Services (DCBS) may use in deciding whether to issue license or endorsement. Requires applicant for license or endorsement to file corporate surety bond or irrevocable letter of credit with, and to provide proof of financial responsibility to, Director and to notify director of certain changes to mortgage loan servicer's operations or governance. Requires mortgage loan servicer to maintain escrow account for funds from borrowers in this state and directs mortgage loan servicer to segregate funds in escrow account from all of mortgage loan servicer's other funds. Prohibits certain practices and otherwise subjects mortgage loan servicers to regulations of similar nature and extent as regulations to which mortgage bankers and mortgage brokers are subject. Subjects mortgage loan servicer's books and records to Director's examination or examination that Conference of State Bank Supervisors conducts. Permits the Director of DCBS, alone or in conjunction with another state or officials from other states, to petition a court of competent jurisdiction to appoint a receiver to prudently manage the affairs of a mortgage loan servicer in certain circumstance. Establishes exemptions for chartered banks and credit unions and an endorsement process for other financial institutions licensed by the Department. Exempts a consumer finance licensee under Chapter 725 or a mortgage broker or broker licensee under Chapter 86A. Exempts Oregon Department of Veterans Affairs (and state agencies and federal agencies) from the definition of "mortgage loan servicer." Becomes operative January 1, 2016. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Additional amendment considerations
- Variety of exemptions for servicers according to the amount of time servicing a mortgage, number of loans the servicer originates and legal status of entity.
- Other states' regulations for mortgage loan servicers
- Personal stories regarding mortgage loan servicers

EFFECT OF MINORITY AMENDMENT:

Eliminates the ability to take possession of property and affairs of a mortgage loan servicer, and replaces with an ability to go to court and ask for the appointment of a receiver. Modifies trustee reference. Exempts persons holding a consumer finance license under Chapter 725 or a mortgage broker or broker licensee under Chapter 86A from definition of a mortgage loan servicer. Exempts Oregon Department of Veterans Affairs (and state agencies and federal agencies) from the definition of "mortgage loan servicer."

BACKGROUND:

When a person borrows large sums for a home, the lender that provides the financing typically assigns the administrative duties of collecting and administering payments, releasing liens, and paying incidental charges to a third party known as a loan servicer. The troubles in the national mortgage market highlighted problems associated with loan servicing, which continue to create difficulties around the nation. In 2012, states negotiated a \$25 billion settlement (the Oregon Department of

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Justice was a party) with national loan servicers to address many borrower issues. However, the settlement did not involve nonbank servicers, which have increasingly obtained large portfolios of loans from banks selling them to raise capital. The concentration of loans with nonbank entities raises concerns as to whether these businesses can operate in a financially sound manner and if consumers may be able to address unlawful servicing practices. Furthermore, if a loan servicer fails, the disruptions to the secondary market (where loans are bought, securitized, and sold) are significant. In 2014, the state of New York blocked such a portfolio sale to a national loan servicer, Nationstar, citing “capacity issues.”

There is growing concern among state regulators that nonbank servicing must be examined for business acumen and compliance with consumer protection standards. 28 states currently regulate servicing of mortgage loans. In 2014, a council of federal banking agencies recommended that states work together on prudential and corporate governance standards for servicers. As for Oregon, the Department of Consumer and Business Services has very limited statutory authority to regulate loan servicing by nonbank entities. The Attorney General can set loan servicing standards as unlawful trade practices under the Unlawful Trade Practices Act, with approval of the Department.