

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7315

BILL NUMBER: HB 1229

NOTE PREPARED: Feb 27, 2004

BILL AMENDED: Feb 26, 2004

SUBJECT: Home Loan Practices.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR: Sen. Bray

BILL STATUS: As Passed Senate

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (A) The bill restricts certain lending acts and practices.
- (B) The bill establishes the Homeowner Protection Unit (HPU) in the Office of the Attorney General (AG).
- (C) The bill provides enforcement procedures for deceptive mortgage acts.
- (D) The bill establishes a \$3 mortgage recording fee.
- (E) The bill provides that certain provisions do not apply to certain financial institutions.
- (F) The bill makes changes to the definition of a high cost home loan.

Effective Date: Upon passage; July 1, 2004.

Explanation of State Expenditures: *Summary: (B)* - The bill establishes the Homeowner Protection Unit under the Attorney General. The following entities may cooperate with the HPU: Indiana Professional Licensing Agency, Department of Financial Institutions, Department of Insurance, Securities Division of the Secretary of State, the Supreme Court Disciplinary Commission, the Indiana Housing Finance Authority, the Department of State Revenue, the State Police, prosecuting attorneys, and local law enforcement agencies in order to implement the enforcement responsibilities of the bill.

Under the bill, the HPU would be funded with revenue from the proposed mortgage record fee. A portion of

the proposed fee would be deposited into the Homeowner Protection Unit Account of the state General Fund (see *Explanation of State Revenues*).

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. For the FY 2004-2005 biennium the AG has been authorized 302 full-time, 32 intermittent, and 3 temporary positions. As of December 3, 2003, the AG had 249 full-time, 2 part-time, 1 temporary, and 20 intermittent employees. For the FY 2004-2005 biennium the AG has been authorized 302 full-time, 32 intermittent, and three temporary positions. The AG reverted \$645,443 from its operating account at the end of FY 2003. If revenue from the proposed fee does not fully fund the HPU, the source of funds and resources required to satisfy the provisions of this bill would depend upon legislative and administrative actions.

(F) Under the bill, a high-cost home loan would be defined as a home loan that has total points and fees that exceed the following: 5% of a loan with a principal of at least \$40,000 or 6% of a loan with a principal less than \$40,000.

The Department of Financial Institutions would be required to adopt rules to implement changes in the dollar amounts of a home loan principal, as described above, with regard to high-cost home loan points and fees. Changes to loan principal amounts would be determined by the procedure under the general provisions of the state uniform consumer credit code. The Department would be required to issue an emergency rule to announce the changes by April 30 of each year in which dollar amounts change. Under current law, the Department already issues emergency rules to announce other dollar amount changes for other credit transactions. The Department should be able to implement this provision within existing resources.

Explanation of State Revenues: *Summary:* (B) - The bill establishes a fee of \$3 for recording a mortgage. County recorders would retain \$0.50 of the \$3 fee. The remaining \$2.50 would be distributed to the Auditor of State. The Auditor would distribute \$1.25 of every \$2.50 to the state General Fund. The remaining \$1.25 would be distributed to the HPU to carry out their responsibilities under the bill.

According to the Department of Local Government Finance, approximately 200,000 parcels of land are sold or conveyed each year. The U.S. Bureau of Census reports that 21.8 M primary mortgages were originated in the U.S. from 1995-1999. Approximately 2.2% of these, or an average of 96,000 mortgages per year (1995-1999), are attributed to Indiana. If the Census Bureau data were applied to the above DLGF estimate, a little less than 50% of all parcels of land sold or conveyed per year in Indiana would have a mortgage. Of the total number of regular and home-equity mortgages reported by the Census Bureau, approximately 23% were second and third mortgages. Using this percentage with the above Census data, the \$3 fee is estimated to generate about \$59,000 for the recorder, approximately \$147,500 to the state General Fund, and approximately \$147,500 for the proposed HPU account in the state General Fund.

Note: These estimates include second and third mortgages. As of the preparation date of this analysis, data on the number of commercial mortgages made in a year was not readily available. Therefore, the revenue estimate may be conservative.

(C) *Civil Penalty*- The AG would be allowed to bring an action to enjoin a person from committing deceptive lending acts under the bill. The court would have the option to assess violators a civil penalty of not more than \$10,000 per violation. If the court decided to issue an injunction instead of a monetary penalty, and that injunction was violated, the violator would be required to pay a civil penalty not exceeding \$10,000.

In addition, persons that knowingly or intentionally were to violate the provisions of the bill would commit an act that is actionable by the AG and would be subject to the penalties for deceptive acts. Current law includes civil penalties up to \$500 per deceptive act and up to \$15,000 per violation of an injunction issued against a person committing a deceptive act.

Criminal Penalty- Under the bill, a person that knowingly or intentionally were to violate the provisions of the bill regarding home loan practices, the person would commit a Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: (C) A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: (B) County recorder revenues would increase by \$0.50 per mortgage filing (see *Explanation of State Revenues*).

(C) If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Office of the Attorney General; Professional Licensing Agency and appropriate licensing boards; Department of Financial Institutions; Department of Insurance; Office of the Secretary of State, Securities Division; Indiana Supreme Court; Department of State Revenue; Indiana State Police.

Local Agencies Affected: County recorders, trial courts, prosecutors, local law enforcement agencies.

Information Sources: Department of Financial Institutions website: www.in.gov/dfi/members/minutes; State Budget Agency website: www.in.gov/sba; State Budget Agency: BUDSTARS system; State of Indiana *HRM Detail Staffing Report, December 3, 2003*; US Bureau of Census: *American Housing Survey For the United States In 1999*.

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