

State Corporation Commission 2009 Fiscal Impact Statement

1. Bill Number: SB991

House of Origin X Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Deeds

3. Committee: Commerce and Labor

4. Title: **Mortgage lending practices; penalty.**

5. Summary: Mortgage lending practices; penalty. Makes it unlawful for a mortgage broker knowingly (i) to make or cause to be made any deliberate and material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; (ii) to use or facilitate the use of any deliberate and material misstatement, misrepresentation, or omission, knowing the same to contain a material misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; or (iii) to conspire to do either of such things. Violations are punishable as a Class 1 misdemeanor. Violators shall also be required to pay restitution. The measure prohibits mortgage brokers from providing or arranging for: (a) a subprime loan containing a provision requiring or permitting the imposition of a prepayment penalty; (b) a residential mortgage loan, other than a reverse mortgage, if the borrower's compliance with any repayment option will result in negative amortization during any six-month period; and (c) a mortgage loan that will pay off a special mortgage unless the borrower has obtained a written certification from an authorized independent loan counselor on the advisability of the loan transaction. A special mortgage is a residential mortgage loan originated, subsidized, or guaranteed by or through an agency of the Commonwealth, a locality, or a nonprofit organization that has one or more nonstandard payment terms that substantially benefit the borrower. The measure expressly gives borrowers a private right of action for violations of certain prohibited practices under the Mortgage Lender and Broker Act, in which action the borrower may seek recovery of actual damages, statutory damages equal to the amount of all lender fees included in the amount of the principal of the mortgage loan, punitive damages, costs, and reasonable attorney fees.

6. Fiscal Impact Estimates: None on state agencies.

7. Budget Amendment Necessary: No.

8. Fiscal Implications: None.

9. Specific Agency or Political Subdivisions Affected: State Corporation Commission and its Bureau of Financial Institutions.

10. Technical Amendment Necessary: No.

11. Other Comments: No.

Date: 1/20/2009 E.J. Face, Jr.

cc: Secretary of Commerce and Trade