
SUBSTITUTE SENATE BILL 6452

State of Washington

60th Legislature

2008 Regular Session

By Senate Consumer Protection & Housing (originally sponsored by Senators Tom, Weinstein, Oemig, and Keiser)

READ FIRST TIME 01/28/08.

1 AN ACT Relating to requiring certain borrower disclosures of yield
2 spread premiums; amending RCW 19.146.030, 19.146.070, 19.146.010, and
3 31.04.102; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature acknowledges that the
6 borrower, who receives the services of a mortgage broker in financing
7 a mortgage on the borrower's primary residence, is entitled to know the
8 total costs of his or her loan at the earliest time possible during the
9 loan process. This knowledge will allow the borrower to compare all
10 possible sources of financing for the source that best meets the
11 borrower's needs and willingness to pay.

12 The payment of a yield spread premium is customarily made from the
13 lender to the mortgage broker, outside of the escrow closing process.
14 Because of this industry practice, the cost of the yield spread premium
15 often is neither subject to a calculation that is relevant to the
16 buyer's costs nor otherwise readily discernable in any meaningful way.

17 The relationship among the borrower, mortgage broker, and lender is
18 sufficient to support the legislature's finding that the yield spread
19 premium is a cost paid by the borrower for purposes of this act. This

1 is because it is the borrower's repayment of the loan at an interest
2 rate higher than par that gives value to the loan and consequently to
3 the lender. That value is the yield spread premium, which is paid by
4 the lender back to the mortgage broker, at least in part, for the
5 mortgage broker's service to the lender in facilitating that above-par
6 loan.

7 Federal law, including the real estate settlement procedures act,
8 allows a state to provide more protection to the borrower, so long as
9 those protections are consistent with federal law. Since the yield
10 spread premium is a cost paid by the borrower, that cost shall be
11 reflected as such at the earliest time possible during the financing
12 process.

13 **Sec. 2.** RCW 19.146.030 and 2006 c 19 s 5 are each amended to read
14 as follows:

15 (1) Within three business days following receipt of a loan
16 application or any moneys from a borrower, a mortgage broker or loan
17 originator on behalf of the mortgage broker shall provide to each
18 borrower a full written disclosure containing an itemization and
19 explanation of all fees and costs that the borrower is required to pay
20 in connection with obtaining a residential mortgage loan, and
21 specifying the fee or fees which inure to the benefit of the mortgage
22 broker and other such disclosures as may be required by rule. A good
23 faith estimate of a fee or cost shall be provided if the exact amount
24 of the fee or cost is not determinable. This subsection (~~shall not be~~
25 ~~construed to~~) requires disclosure of the distribution or breakdown of
26 loan fees, discount, or points between the mortgage broker and any
27 lender or investor.

28 (2) The written disclosure shall contain the following information:

29 (a) The annual percentage rate, finance charge, amount financed,
30 total amount of all payments, number of payments, amount of each
31 payment, amount of points or prepaid interest and the conditions and
32 terms under which any loan terms may change between the time of
33 disclosure and closing of the loan; and if a variable rate, the
34 circumstances under which the rate may increase, any limitation on the
35 increase, the effect of an increase, and an example of the payment
36 terms resulting from an increase. Disclosure in compliance with the

1 requirements of the truth-in-lending act, 15 U.S.C. Sec. 1601 and
2 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be
3 deemed to comply with the disclosure requirements of this subsection;

4 (b) The itemized costs of any credit report, appraisal, title
5 report, title insurance policy, mortgage insurance, escrow fee,
6 property tax, insurance, structural or pest inspection, and any other
7 third-party provider's costs associated with the residential mortgage
8 loan. Disclosure through good faith estimates of settlement services
9 and special information booklets in compliance with the requirements of
10 the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and
11 Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall
12 be deemed to comply with the disclosure requirements of this
13 subsection;

14 (c) If applicable, the cost, terms, duration, and conditions of a
15 lock-in agreement and whether a lock-in agreement has been entered, and
16 whether the lock-in agreement is guaranteed by the mortgage broker or
17 lender, and if a lock-in agreement has not been entered, disclosure in
18 a form acceptable to the director that the disclosed interest rate and
19 terms are subject to change;

20 (d) A statement that if the borrower is unable to obtain a loan for
21 any reason, the mortgage broker must, within five days of a written
22 request by the borrower, give copies of any appraisal, title report, or
23 credit report paid for by the borrower to the borrower, and transmit
24 the appraisal, title report, or credit report to any other mortgage
25 broker or lender to whom the borrower directs the documents to be sent;

26 (e) Whether and under what conditions any lock-in fees are
27 refundable to the borrower; and

28 (f) A statement providing that moneys paid by the borrower to the
29 mortgage broker for third-party provider services are held in a trust
30 account and any moneys remaining after payment to third-party providers
31 will be refunded.

32 (3)(a) In addition to any other written disclosure requirements in
33 this section, the mortgage broker or loan originator must make a
34 written disclosure of the following:

35 (i) The full transaction costs that will be incurred by the
36 borrower if the mortgage broker receives a yield spread premium from
37 the lender. Such transaction costs shall include, but are not limited
38 to:

1 (A) A higher annual percentage rate;

2 (B) A variable or adjustable interest rate;

3 (C) A prepayment penalty; or

4 (D) A balloon payment; and

5 (ii) The estimated yield spread premium, which shall be expressed
6 as an exact dollar figure, not as a range of dollar figures.

7 (b) The written disclosure required by this subsection (3) shall
8 also include amortization schedules that illustrate: (i) The payments
9 and complete costs of a loan if the mortgage broker receives a yield
10 spread premium; and (ii) the payments and complete cost of a loan if
11 the mortgage broker does not receive a yield spread premium. The
12 department shall provide by rule an amortization schedule template,
13 which satisfies this disclosure requirement.

14 (c) The disclosures required by this subsection (3) must appear on
15 the good faith estimate and on any closing documents.

16 (4) If subsequent to the written disclosure being provided under
17 this section, a mortgage broker or loan originator enters into a lock-
18 in agreement with a borrower or represents to the borrower that the
19 borrower has entered into a lock-in agreement, then no less than three
20 business days thereafter including Saturdays, the mortgage broker or
21 loan originator shall deliver or send by first-class mail to the
22 borrower a written confirmation of the terms of the lock-in agreement,
23 which shall include a copy of the disclosure made under subsection
24 (2)(c) of this section.

25 ~~((+4))~~ (5) A mortgage broker or loan originator on behalf of a
26 mortgage broker shall not charge any fee that inures to the benefit of
27 the mortgage broker if it exceeds the fee disclosed on the written
28 disclosure pursuant to this section, unless (a) the need to charge the
29 fee was not reasonably foreseeable at the time the written disclosure
30 was provided and (b) the mortgage broker or loan originator on behalf
31 of a mortgage broker has provided to the borrower, no less than three
32 business days prior to the signing of the loan closing documents, a
33 clear written explanation of the fee and the reason for charging a fee
34 exceeding that which was previously disclosed. However, if the
35 borrower's closing costs on the final settlement statement, excluding
36 prepaid escrowed costs of ownership as defined by rule, does not exceed
37 the total closing costs in the most recent good faith estimate,

1 excluding prepaid escrowed costs of ownership as defined by rule, no
2 other disclosures shall be required by this subsection.

3 **Sec. 3.** RCW 19.146.070 and 2006 c 19 s 8 are each amended to read
4 as follows:

5 (1) Except as otherwise permitted by this section, a mortgage
6 broker shall not receive a fee, commission, or compensation of any kind
7 in connection with the preparation, negotiation, and brokering of a
8 residential mortgage loan unless a borrower actually obtains a loan
9 from a lender on the terms and conditions agreed upon by the borrower
10 and mortgage broker. A loan originator may not accept a fee,
11 commission, or compensation of any kind from borrowers in connection
12 with the preparation, negotiation, and brokering of a residential
13 mortgage loan.

14 (2) A mortgage broker may:

15 (a) If the mortgage broker has obtained for the borrower a written
16 commitment from a lender for a loan on the terms and conditions agreed
17 upon by the borrower and the mortgage broker, and the borrower fails to
18 close on the loan through no fault of the mortgage broker, charge a fee
19 not to exceed three hundred dollars for services rendered, preparation
20 of documents, or transfer of documents in the borrower's file which
21 were prepared or paid for by the borrower if the fee is not otherwise
22 prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and
23 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

24 (b) Solicit or receive fees for third party provider goods or
25 services in advance. Fees for any goods or services not provided must
26 be refunded to the borrower and the mortgage broker may not charge more
27 for the goods and services than the actual costs of the goods or
28 services charged by the third party provider.

29 (3) A loan originator may not solicit or receive fees for a third-
30 party provider of goods or services except that a loan originator may
31 transfer funds from a borrower to a licensed mortgage broker, exempt
32 mortgage broker, or third-party provider, if the loan originator does
33 not deposit, hold, retain, or use the funds for any purpose other than
34 the payment of bona fide fees to third-party providers.

35 (4)(a) Any yield spread premium or equivalent compensation or gain
36 paid between a mortgage broker and a lender prior to or after closing
37 of a residential mortgage loan must be refunded directly to the

1 borrower, if the amount of compensation is greater than the original
2 good faith estimate provided under RCW 19.146.030 or a reasonable
3 redisclosure.

4 (b) The department shall declare by rule what constitutes a
5 reasonable redisclosure for the purposes of this subsection (4).

6 (c) For purposes of this subsection (4), "original good faith
7 estimate" means either:

8 (i) A good faith estimate that the borrower received at least
9 thirty days prior to closing, if the borrower made the initial
10 application more than thirty days prior to closing; or

11 (ii) A good faith estimate that the borrower received within the
12 time frame required by RCW 19.146.030, if the borrower made the initial
13 application for a loan less than thirty days prior to closing.

14 **Sec. 4.** RCW 19.146.010 and 2006 c 19 s 2 are each amended to read
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Affiliate" means any person who directly or indirectly through
19 one or more intermediaries, controls, or is controlled by, or is under
20 common control with another person.

21 (2) "Application" means the same as in Regulation X, Real Estate
22 Settlement Procedures, 24 C.F.R. Sec. 3500.

23 (3) "Borrower" means any person who consults with or retains a
24 mortgage broker or loan originator in an effort to obtain or seek
25 advice or information on obtaining or applying to obtain a residential
26 mortgage loan for himself, herself, or persons including himself or
27 herself, regardless of whether the person actually obtains such a loan.

28 (4) "Computer loan information systems" or "CLI system" means a
29 real estate mortgage financing information system that facilitates the
30 provision of information to consumers by a mortgage broker, loan
31 originator, lender, real estate agent, or other person regarding
32 interest rates and other loan terms available from different lenders.

33 (5) "Department" means the department of financial institutions.

34 (6) "Designated broker" means a natural person designated as the
35 person responsible for activities of the licensed mortgage broker in
36 conducting the business of a mortgage broker under this chapter and who

1 meets the experience and examination requirements set forth in RCW
2 19.146.210(1)(e).

3 (7) "Director" means the director of financial institutions.

4 (8) "Employee" means an individual who has an employment
5 relationship with a mortgage broker, and the individual is treated as
6 an employee by the mortgage broker for purposes of compliance with
7 federal income tax laws.

8 (9) "Independent contractor" or "person who independently
9 contracts" means any person that expressly or impliedly contracts to
10 perform mortgage brokering services for another and that with respect
11 to its manner or means of performing the services is not subject to the
12 other's right of control, and that is not treated as an employee by the
13 other for purposes of compliance with federal income tax laws.

14 (10) "Loan originator" means a natural person who (a) takes a
15 residential mortgage loan application for a mortgage broker, or (b)
16 offers or negotiates terms of a mortgage loan, for direct or indirect
17 compensation or gain, or in the expectation of direct or indirect
18 compensation or gain. "Loan originator" also includes a person who
19 holds themselves out to the public as able to perform any of these
20 activities. "Loan originator" does not mean persons performing purely
21 administrative or clerical tasks for a mortgage broker. For the
22 purposes of this subsection, "administrative or clerical tasks" means
23 the receipt, collection, and distribution of information common for the
24 processing of a loan in the mortgage industry and communication with a
25 borrower to obtain information necessary for the processing of a loan.
26 A person who holds himself or herself out to the public as able to
27 obtain a loan is not performing administrative or clerical tasks.

28 (11) "Lock-in agreement" means an agreement with a borrower made by
29 a mortgage broker or loan originator, in which the mortgage broker or
30 loan originator agrees that, for a period of time, a specific interest
31 rate or other financing terms will be the rate or terms at which it
32 will make a loan available to that borrower.

33 (12) "Mortgage broker" means any person who for compensation or
34 gain, or in the expectation of compensation or gain (a) makes a
35 residential mortgage loan or assists a person in obtaining or applying
36 to obtain a residential mortgage loan or (b) holds himself or herself
37 out as being able to make a residential mortgage loan or assist a
38 person in obtaining or applying to obtain a residential mortgage loan.

1 (13) "Person" means a natural person, corporation, company, limited
2 liability corporation, partnership, or association.

3 (14) "Principal" means any person who controls, directly or
4 indirectly through one or more intermediaries, or alone or in concert
5 with others, a ten percent or greater interest in a partnership,
6 company, association, or corporation, and the owner of a sole
7 proprietorship.

8 (15) "Residential mortgage loan" means any loan primarily for
9 personal, family, or household use secured by a mortgage or deed of
10 trust on residential real estate upon which is constructed or intended
11 to be constructed a single family dwelling or multiple family dwelling
12 of four or less units.

13 (16) "Third-party provider" means any person other than a mortgage
14 broker or lender who provides goods or services to the mortgage broker
15 in connection with the preparation of the borrower's loan and includes,
16 but is not limited to, credit reporting agencies, title companies,
17 appraisers, structural and pest inspectors, or escrow companies.

18 (17) "Yield spread premium" means a direct payment by the lender to
19 the mortgage broker that is based on the difference between the
20 interest rate at which the broker originates the residential mortgage
21 loan and the wholesale par rate for which the borrower qualifies.

22 **Sec. 5.** RCW 31.04.102 and 2002 c 346 s 1 are each amended to read
23 as follows:

24 (1) For all loans made by a licensee that are not secured by a lien
25 on real property, the licensee must make disclosures in compliance with
26 the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12
27 C.F.R. Sec. [Part] 226, and all other applicable federal laws and
28 regulations.

29 (2) For all loans made by a licensee that are secured by a lien on
30 real property, the licensee shall provide to each borrower within three
31 business days following receipt of a loan application a written
32 disclosure containing an itemized estimation and explanation of all
33 fees and costs that the borrower is required to pay in connection with
34 obtaining a loan from the licensee. A good faith estimate of a fee or
35 cost shall be provided if the exact amount of the fee or cost is not
36 available when the disclosure is provided. Disclosure in a form which
37 complies with the requirements of the truth in lending act, 15 U.S.C.

1 Sec. 1601 and regulation Z, 12 C.F.R. Sec. [Part] 226, the real estate
2 settlement procedures act and regulation X, 24 C.F.R. Sec. 3500, and
3 all other applicable federal laws and regulations, as now or hereafter
4 amended, shall be deemed to constitute compliance with this disclosure
5 requirement. Each licensee shall comply with all other applicable
6 federal and state laws and regulations, including the disclosures
7 required by chapter 19.146 RCW.

8 (3) In addition, for all loans made by the licensee that are
9 secured by a lien on real property, the licensee must provide to the
10 borrower an estimate of the annual percentage rate on the loan and a
11 disclosure of whether or not the loan contains a prepayment penalty
12 within three days of receipt of a loan application. The annual
13 percentage rate must be calculated in compliance with the truth in
14 lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec.
15 [Part] 226. If a licensee provides the borrower with a disclosure in
16 compliance with the requirements of the truth in lending act within
17 three business days of receipt of a loan application, then the licensee
18 has complied with this subsection. If the director determines that the
19 federal government has required a disclosure that substantially meets
20 the objectives of this subsection, then the director may make a
21 determination by rule that compliance with this federal disclosure
22 requirement constitutes compliance with this subsection.

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