SENATE BILL REPORT
SB 5659

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 18, 2009

Title: An act relating to the consideration of mitigating factors for enforcement actions under the mortgage broker practices act.

Brief Description: Authorizing the consideration of mitigating factors for enforcement actions under the mortgage broker practices act.

Sponsors: Senators Berkey, Benton and Marr.

Brief History:
Committee Activity: Financial Institutions, Housing & Insurance: 2/04/09, 2/18/09 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5659 be substituted therefor, and the substitute bill do pass.
Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin, McDermott, Parlette and Schoesler.

Staff: Diane Smith (786-7410)

Background: Loan originators and mortgage brokers assist people in obtaining or applying for mortgage loans on residential property. Mortgage brokers are paid by the mortgage client, the lender, or both, for their assistance. The loan originator is paid by the broker. The mortgage broker must have a written agreement with a lender before doing business. Contracts entered into by the loan originator are binding on the mortgage broker. They are both regulated by the Department of Financial Institutions (DFI). Loan originators were not licensed until 2007.

Mortgage brokers must satisfy a surety bonding requirement, as established by DFI, that can be from $20,000 to $60,000. There is no bonding required of loan originators.

A mortgage broker must at all times have a designated broker with responsibility for all activities conducted in the mortgage brokers's business. The designated broker who has supervisory authority over a mortgage broker is responsible for violations of the Mortgage

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Broker Practices Act committed by licensees, employees, or independent contractors, under certain circumstances.

One set of circumstances under which the designated broker, principal, or owner is responsible for the acts of others is when the designated broker, principal, or owner either instructs another to violate the act or knows of the violations committed by another and approves or allows these acts to be committed.

The other set of circumstances under which the designated broker, principal, or owner is responsible for the acts of others is when the designated broker, principal, or owner with supervisory authority knows or should have known, by exercising reasonable care and inquiry, of violations that could have been avoided or mitigated but failed to take reasonable remedial action.

DFI may examine the business of mortgage brokers and loan originators to make certain that licensees are conducting business in compliance with the law. The costs for investigation may be charged to the licensee unless the investigation determines no violation occurred or unless the mortgage broker or loan originator provides a satisfactory remedy and DFI issues no order.

Summary of Bill (Recommended Substitute): When the licensee voluntarily discloses a violation that is the result of a deliberate and knowing violation by an employee or contractor loan originator and the violation was intended to be concealed from the licensee, then DFI may consider certain mitigating factors when it investigates a violation of the act or when it engages in an enforcement action. These factors number 15. DFI may adopt any other mitigating factors by rule.

In this limited circumstance, DFI must pursue the employee or contractor loan originator. The mortgage broker's voluntary disclosure, alone, does not trigger an investigation or examination.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): Under limited circumstances, DFI may consider 15 mitigating factors, which do not include the length of time the licensee has engaged in business without any prior administrative actions. These limited circumstances are when the licensee voluntarily discloses the deliberate and knowing violation by an employee or independent contractor loan originator and the violation was intended to be concealed from the licensee.

The licensee's voluntary disclosure does not require that DFI comply with the three requirements. Instead, DFI must pursue the violator. The disclosure, alone, may not trigger an investigation or enforcement action.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Mortgage professionals are in favor of this particular bill. They are working with the DFI to find common ground. The legislation protects consumers and gets people who should not be in the profession out of it.

CON: Mortgage brokers must have designated brokers who are responsible. Turning someone in can be a factor in the department's decisions. The department has seen to it that $500,000 was returned to harmed consumers We hope we can work out some version.

Persons Testifying: PRO: Jason Bloom, Washington Association of Mortgage Professionals.

CON: Deb Bortner, DFI.