
HOUSE BILL 2452

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Vick, Ryu, and Kirby; by request of Department of Financial Institutions

Read first time 01/17/14. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to clarifying the statute of limitations for
2 enforcement actions, sharing of information with federal and state
3 regulatory authorities, and requiring call reports for nondepository
4 institutions regulated by the department of financial institutions;
5 amending RCW 18.44.430, 19.146.220, 31.04.045, 31.04.093, and
6 31.45.110; adding new sections to chapter 19.230 RCW; and adding new
7 sections to chapter 31.45 RCW.

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

9 **Sec. 1.** RCW 18.44.430 and 2010 c 34 s 10 are each amended to read
10 as follows:

11 (1) The director may, upon notice to the escrow agent and to the
12 insurer providing coverage under RCW 18.44.201, deny, suspend, decline
13 to renew, or revoke the license of any escrow agent or escrow officer
14 if the director finds that the applicant or any partner, officer,
15 director, controlling person, or employee has committed any of the
16 following acts or engaged in any of the following conduct:

17 (a) Obtaining a license by means of fraud, misrepresentation,
18 concealment, or through the mistake or inadvertence of the director.

1 (b) Violating any of the provisions of this chapter or any lawful
2 rules made by the director pursuant thereto.

3 (c) The commission of a crime against the laws of this or any other
4 state or government, involving moral turpitude or dishonest dealings.

5 (d) Knowingly committing or being a party to, any material fraud,
6 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
7 or device whereby any other person lawfully relying upon the word,
8 representation, or conduct of the licensee or agent or any partner,
9 officer, director, controlling person, or employee acts to his or her
10 injury or damage.

11 (e) Conversion of any money, contract, deed, note, mortgage, or
12 abstract or other evidence of title to his or her own use or to the use
13 of his or her principal or of any other person, when delivered to him
14 or her in trust or on condition, in violation of the trust or before
15 the happening of the condition; and failure to return any money or
16 contract, deed, note, mortgage, abstract, or other evidence of title
17 within thirty days after the owner thereof is entitled thereto, and
18 makes demand therefor, shall be prima facie evidence of such
19 conversion.

20 (f) Failing, upon demand, to disclose any information within his or
21 her knowledge to, or to produce any document, book, or record in his or
22 her possession for inspection of, the director or his or her authorized
23 representatives.

24 (g) Committing any act of fraudulent or dishonest dealing, and a
25 certified copy of the final holding of any court of competent
26 jurisdiction in such matter shall be conclusive evidence in any hearing
27 under this chapter.

28 (h) Accepting, taking, or charging any undisclosed commission,
29 rebate, or direct profit on expenditures made for the principal.

30 (i) Committing acts or engaging in conduct that demonstrates the
31 applicant or licensee to be incompetent or untrustworthy, or a source
32 of injury and loss to the public.

33 (2) Any conduct of an applicant or licensee that constitutes
34 grounds for enforcement action under this chapter is sufficient
35 regardless of whether the conduct took place within or outside of the
36 state of Washington.

37 (3) In addition to or in lieu of a license suspension, revocation,
38 or denial, the director may assess a fine of up to one hundred dollars

1 per day for each violation of this chapter or rules adopted under this
2 chapter and may remove and/or prohibit from participation in the
3 conduct of the affairs of any licensed escrow agent, any officer,
4 controlling person, director, employee, or licensed escrow officer.
5 The statute of limitations on actions not subject to RCW 4.16.160 that
6 are brought under this chapter by the director is five years.

7 (4) In addition to or in lieu of (a) a license suspension,
8 revocation, or denial, or (b) fines payable to the department, the
9 director may order an escrow agent, officer, controlling person,
10 director, employee, or licensed escrow officer violating this chapter
11 to make restitution to an injured consumer.

12 **Sec. 2.** RCW 19.146.220 and 2013 c 30 s 5 are each amended to read
13 as follows:

14 (1) The director may enforce all laws and rules relating to the
15 licensing of mortgage brokers and loan originators, grant or deny
16 licenses to mortgage brokers and loan originators, and hold hearings.

17 (2) The director may impose fines or order restitution against
18 licensees or other persons subject to this chapter, or deny, suspend,
19 decline to renew, or revoke licenses for:

- 20 (a) Violations of orders, including cease and desist orders;
- 21 (b) False statements or omission of material information on the
22 application that, if known, would have allowed the director to deny the
23 application for the original license;
- 24 (c) Failure to pay a fee required by the director or maintain the
25 required bond;
- 26 (d) Failure to comply with any directive, order, or subpoena of the
27 director; or
- 28 (e) Any violation of this chapter.

29 (3) The director may impose fines on an employee, loan originator,
30 independent contractor, or agent of the licensee, or other person
31 subject to this chapter for:

- 32 (a) Any violations of this chapter; or
- 33 (b) Failure to comply with any directive or order of the director.

34 (4) The director may issue orders directing a licensee, its
35 employee, loan originator, independent contractor, agent, or other
36 person subject to this chapter to cease and desist from conducting
37 business.

1 (5) The director may issue orders removing from office or
2 prohibiting from participation in the conduct of the affairs of a
3 licensed mortgage broker, or both, any officer, principal, employee, or
4 loan originator of any licensed mortgage broker or any person subject
5 to licensing under this chapter for:

6 (a) Any violation of this chapter;

7 (b) False statements or omission of material information on the
8 application that, if known, would have allowed the director to deny the
9 application for the original license;

10 (c) Conviction of a gross misdemeanor involving dishonesty or
11 financial misconduct or a felony after obtaining a license; or

12 (d) Failure to comply with any directive or order of the director.

13 (6) Each day's continuance of a violation or failure to comply with
14 any directive or order of the director is a separate and distinct
15 violation or failure.

16 (7) The statute of limitations on actions not subject to RCW
17 4.16.160 that are brought under this chapter by the director is five
18 years.

19 (8) The director shall establish by rule standards for licensure of
20 applicants licensed in other jurisdictions.

21 ((+8)) (9) The director shall immediately suspend the license or
22 certificate of a person who has been certified pursuant to RCW
23 74.20A.320 by the department of social and health services as a person
24 who is not in compliance with a support order. If the person has
25 continued to meet all other requirements for reinstatement during the
26 suspension, reissuance of the license or certificate shall be automatic
27 upon the director's receipt of a release issued by the department of
28 social and health services stating that the licensee is in compliance
29 with the order.

30 NEW SECTION. Sec. 3. A new section is added to chapter 19.230 RCW
31 to read as follows:

32 The statute of limitations on actions not subject to RCW 4.16.160
33 that are brought under this chapter by the director is five years.

34 NEW SECTION. Sec. 4. A new section is added to chapter 19.230 RCW
35 to read as follows:

1 Each licensee on a nationwide licensing system shall submit reports
2 of condition which must be in the form and must contain the information
3 as the director may require.

4 **Sec. 5.** RCW 31.04.045 and 2010 c 35 s 3 are each amended to read
5 as follows:

6 (1) Application for a license under this chapter must be made to
7 the nationwide mortgage licensing system and registry or in the form
8 prescribed by the director. The application must contain at least the
9 following information:

10 (a) The name and the business addresses of the applicant;

11 (b) If the applicant is a partnership or association, the name of
12 every member;

13 (c) If the applicant is a corporation, the name, residence address,
14 and telephone number of each officer and director;

15 (d) The street address, county, and municipality from which
16 business is to be conducted; and

17 (e) Such other information as the director may require by rule.

18 (2) As part of or in connection with an application for any license
19 under this section, or periodically upon license renewal, each officer,
20 director, and owner applicant shall furnish information concerning his
21 or her identity, including fingerprints for submission to the
22 Washington state patrol, the federal bureau of investigation, (~~the~~
23 ~~nationwide mortgage licensing system and registry,~~) or any
24 governmental agency or entity authorized to receive this information
25 for a state and national criminal history background check; personal
26 history; experience; business record; purposes; and other pertinent
27 facts, as the director may reasonably require. As part of or in
28 connection with an application for a license under this chapter, or
29 periodically upon license renewal, the director is authorized to
30 receive criminal history record information that includes nonconviction
31 data as defined in RCW 10.97.030. The department may only disseminate
32 nonconviction data obtained under this section to criminal justice
33 agencies. This section does not apply to financial institutions
34 regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33
35 RCW.

36 (3) (~~In order to reduce the points of contact which the federal~~
37 ~~bureau of investigation may have to maintain, the director may use the~~

1 nationwide mortgage licensing system and registry as a channeling agent
2 for requesting information from and distributing information to the
3 department of justice or any governmental agency.

4 ~~(4) In order to reduce the points of contact which the director may~~
5 ~~have to maintain, the director may use the nationwide mortgage~~
6 ~~licensing system and registry as a channeling agent for requesting and~~
7 ~~distributing information to and from any source so directed by the~~
8 ~~director.~~

9 ~~(5))~~ At the time of filing an application for a license under this
10 chapter, each applicant shall pay to the director (~~or through the~~
11 ~~nationwide mortgage licensing system and registry~~) an investigation
12 fee and the license fee in an amount determined by rule of the director
13 to be sufficient to cover the director's costs in administering this
14 chapter.

15 ~~((6))~~ (4) Each applicant shall file and maintain a surety bond,
16 approved by the director, executed by the applicant as obligor and by
17 a surety company authorized to do a surety business in this state as
18 surety, whose liability as such surety shall not exceed in the
19 aggregate the penal sum of the bond. The penal sum of the bond shall
20 be a minimum of thirty thousand dollars and based on the annual dollar
21 amount of loans originated or residential mortgage loans serviced. The
22 bond shall run to the state of Washington as obligee for the use and
23 benefit of the state and of any person or persons who may have a cause
24 of action against the obligor under this chapter. The bond shall be
25 conditioned that the obligor as licensee will faithfully conform to and
26 abide by this chapter and all the rules adopted under this chapter.
27 The bond will pay to the state and any person or persons having a cause
28 of action against the obligor all moneys that may become due and owing
29 to the state and those persons under and by virtue of this chapter. In
30 lieu of a surety bond, if the applicant is a Washington business
31 corporation, the applicant may maintain unimpaired capital, surplus,
32 and long-term subordinated debt in an amount that at any time its
33 outstanding promissory notes or other evidences of debt (other than
34 long-term subordinated debt) in an aggregate sum do not exceed three
35 times the aggregate amount of its unimpaired capital, surplus, and
36 long-term subordinated debt. The director may define qualifying "long-
37 term subordinated debt" for purposes of this section.

1 **Sec. 6.** RCW 31.04.093 and 2013 c 29 s 5 are each amended to read
2 as follows:

3 (1) The director shall enforce all laws and rules relating to the
4 licensing and regulation of licensees and persons subject to this
5 chapter.

6 (2) The director may deny applications for licenses for:

7 (a) Failure of the applicant to demonstrate within its application
8 for a license that it meets the requirements for licensing in RCW
9 31.04.045 and 31.04.055;

10 (b) Violation of an order issued by the director under this chapter
11 or another chapter administered by the director, including but not
12 limited to cease and desist orders and temporary cease and desist
13 orders;

14 (c) Revocation or suspension of a license to conduct lending or
15 residential mortgage loan servicing, or to provide settlement services
16 associated with lending or residential mortgage loan servicing, by this
17 state, another state, or by the federal government within five years of
18 the date of submittal of a complete application for a license; or

19 (d) Filing an incomplete application when that incomplete
20 application has been filed with the department for sixty or more days,
21 provided that the director has given notice to the licensee that the
22 application is incomplete, informed the applicant why the application
23 is incomplete, and allowed at least twenty days for the applicant to
24 complete the application.

25 (3) The director may suspend or revoke a license issued under this
26 chapter if the director finds that:

27 (a) The licensee has failed to pay any fee due the state of
28 Washington, has failed to maintain in effect the bond or permitted
29 substitute required under this chapter, or has failed to comply with
30 any specific order or demand of the director lawfully made and directed
31 to the licensee in accordance with this chapter;

32 (b) The licensee, either knowingly or without the exercise of due
33 care, has violated any provision of this chapter or any rule adopted
34 under this chapter; or

35 (c) A fact or condition exists that, if it had existed at the time
36 of the original application for the license, clearly would have allowed
37 the director to deny the application for the original license. The
38 director may revoke or suspend only the particular license with respect

1 to which grounds for revocation or suspension may occur or exist unless
2 the director finds that the grounds for revocation or suspension are of
3 general application to all offices or to more than one office operated
4 by the licensee, in which case, the director may revoke or suspend all
5 of the licenses issued to the licensee.

6 (4) The director may impose fines of up to one hundred dollars per
7 day, per violation, upon the licensee, its employee or loan originator,
8 or other person subject to this chapter for:

9 (a) Any violation of this chapter; or

10 (b) Failure to comply with any order or subpoena issued by the
11 director under this chapter.

12 (5) The director may issue an order directing the licensee, its
13 employee or loan originator, or other person subject to this chapter
14 to:

15 (a) Cease and desist from conducting business in a manner that is
16 injurious to the public or violates any provision of this chapter;

17 (b) Take such affirmative action as is necessary to comply with
18 this chapter; or

19 (c) Make a refund or restitution to a borrower or other person who
20 is damaged as a result of a violation of this chapter.

21 (6) The director may issue an order removing from office or
22 prohibiting from participation in the affairs of any licensee, or both,
23 any officer, principal, employee or loan originator, or any person
24 subject to this chapter for:

25 (a) False statements or omission of material information from an
26 application for a license that, if known, would have allowed the
27 director to deny the original application for a license;

28 (b) Conviction of a gross misdemeanor involving dishonesty or
29 financial misconduct or a felony;

30 (c) Suspension or revocation of a license to engage in lending or
31 residential mortgage loan servicing, or perform a settlement service
32 related to lending or residential mortgage loan servicing, in this
33 state or another state;

34 (d) Failure to comply with any order or subpoena issued under this
35 chapter;

36 (e) A violation of RCW 31.04.027, 31.04.102, 31.04.155, or
37 31.04.221; or

1 (f) Failure to obtain a license for activity that requires a
2 license.

3 (7) Except to the extent prohibited by another statute, the
4 director may engage in informal settlement of complaints or enforcement
5 actions including, but not limited to, payment to the department for
6 purposes of financial literacy and education programs authorized under
7 RCW 43.320.150. If any person subject to this chapter makes a payment
8 to the department under this section, the person may not advertise such
9 payment.

10 (8) Whenever the director determines that the public is likely to
11 be substantially injured by delay in issuing a cease and desist order,
12 the director may immediately issue a temporary cease and desist order.
13 The order may direct the licensee to discontinue any violation of this
14 chapter, to take such affirmative action as is necessary to comply with
15 this chapter, and may include a summary suspension of the licensee's
16 license and may order the licensee to immediately cease the conduct of
17 business under this chapter. The order shall become effective at the
18 time specified in the order. Every temporary cease and desist order
19 shall include a provision that a hearing will be held upon request to
20 determine whether the order will become permanent. Such hearing shall
21 be held within fourteen days of receipt of a request for a hearing
22 unless otherwise specified in chapter 34.05 RCW.

23 (9) A licensee may surrender a license by delivering to the
24 director written notice of surrender, but the surrender does not affect
25 the licensee's civil or criminal liability, if any, for acts committed
26 before the surrender, including any administrative action initiated by
27 the director to suspend or revoke a license, impose fines, compel the
28 payment of restitution to borrowers or other persons, or exercise any
29 other authority under this chapter. The statute of limitations on
30 actions not subject to RCW 4.16.160 that are brought under this chapter
31 by the director is five years.

32 (10) The revocation, suspension, or surrender of a license does not
33 impair or affect the obligation of a preexisting lawful contract
34 between the licensee and a borrower.

35 (11) Every license issued under this chapter remains in force and
36 effect until it has been surrendered, revoked, or suspended in
37 accordance with this chapter. However, the director may on his or her

1 own initiative reinstate suspended licenses or issue new licenses to a
2 licensee whose license or licenses have been revoked if the director
3 finds that the licensee meets all the requirements of this chapter.

4 (12) A license issued under this chapter expires upon the
5 licensee's failure to comply with the annual assessment requirements in
6 RCW 31.04.085, and the rules. The department must provide notice of
7 the expiration to the address of record provided by the licensee. On
8 the 15th day after the department provides notice, if the assessment
9 remains unpaid, the license expires. The licensee must receive notice
10 prior to expiration and have the opportunity to stop the expiration as
11 set forth in rule.

12 **Sec. 7.** RCW 31.45.110 and 2012 c 17 s 11 are each amended to read
13 as follows:

14 (1) The director may issue and serve upon a licensee or applicant,
15 or any director, officer, sole proprietor, partner, or controlling
16 person of a licensee or applicant, a statement of charges if, in the
17 opinion of the director, any licensee or applicant, or any director,
18 officer, sole proprietor, partner, or controlling person of a licensee
19 or applicant:

20 (a) Is engaging or has engaged in an unsafe or unsound financial
21 practice in conducting a business governed by this chapter;

22 (b) Is violating or has violated this chapter, including violations
23 of:

24 (i) Any rules, orders, or subpoenas issued by the director under
25 any act;

26 (ii) Any condition imposed in writing by the director in connection
27 with the granting of any application or other request by the licensee;
28 or

29 (iii) Any written agreement made with the director;

30 (c) Is about to do the acts prohibited in (a) or (b) of this
31 subsection when the opinion that the threat exists is based upon
32 reasonable cause;

33 (d) Obtains a license by means of fraud, misrepresentation,
34 concealment, or through mistake or inadvertence of the director;

35 (e) Provides false statements or omits material information on an
36 application;

1 (f) Knowingly or negligently omits material information during or
2 in response to an examination or in connection with an investigation by
3 the director;

4 (g) Fails to pay a fee or assessment required by the director or
5 any multistate licensing system prescribed by the director, or fails to
6 maintain the required bond or deposit;

7 (h) Commits a crime against the laws of any jurisdiction involving
8 moral turpitude, financial misconduct, or dishonest dealings. For the
9 purposes of this section, a certified copy of the final holding of any
10 court, tribunal, agency, or administrative body of competent
11 jurisdiction is conclusive evidence in any hearing under this chapter;

12 (i) Knowingly commits or is a party to any material fraud,
13 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
14 or device whereby any other person relying upon the word,
15 representation, or conduct acts to his or her injury or damage;

16 (j) Converts any money or its equivalent to his or her own use or
17 to the use of his or her principal or of any other person;

18 (k) Fails to disclose any information within his or her knowledge
19 or fails to produce any document, book, or record in his or her
20 possession for inspection by the director upon demand;

21 (l) Commits any act of fraudulent or dishonest dealing. For the
22 purposes of this section, a certified copy of the final holding of any
23 court, tribunal, agency, or administrative body of competent
24 jurisdiction is conclusive evidence in any hearing under this chapter;

25 (m) Commits an act or engages in conduct that demonstrates
26 incompetence or untrustworthiness, or is a source of injury and loss to
27 the public;

28 (n) Violates any applicable state or federal law relating to the
29 activities governed by this chapter.

30 (2) The statement of charges must be issued under chapter 34.05
31 RCW. The director or the director's designee may impose the following
32 sanctions against any licensee or applicant, or any directors,
33 officers, sole proprietors, partners, controlling persons, or employees
34 of a licensee or applicant:

35 (a) Deny, revoke, suspend, or condition a license or small loan
36 endorsement;

37 (b) Order the licensee or person to cease and desist from practices

1 that violate this chapter or constitute unsafe and unsound financial
2 practices;

3 (c) Impose a fine not to exceed one hundred dollars per day for
4 each day's violation of this chapter;

5 (d) Order restitution or refunds to borrowers or other parties for
6 violations of this chapter or take other affirmative action as
7 necessary to comply with this chapter; and

8 (e) Remove from office or ban from participation in the affairs of
9 any licensee any director, officer, sole proprietor, partner,
10 controlling person, or employee of a licensee.

11 (3) The proceedings to impose the sanctions described in subsection
12 (2) of this section, including any hearing or appeal of the statement
13 of charges, are governed by chapter 34.05 RCW. The statute of
14 limitations on actions not subject to RCW 4.16.160 that are brought
15 under this chapter by the director is five years.

16 (4) Unless the licensee or person personally appears at the hearing
17 or is represented by a duly authorized representative, the licensee is
18 deemed to have consented to the statement of charges and the sanctions
19 imposed in the statement of charges.

20 (5) Except to the extent prohibited by another statute, the
21 director may engage in informal settlement of complaints or enforcement
22 actions including, but not limited to, payment to the department for
23 purposes of financial literacy and education programs authorized under
24 RCW 43.320.150.

25 NEW SECTION. Sec. 8. A new section is added to chapter 31.45 RCW
26 to read as follows:

27 (1) The requirements under any federal law or laws of another state
28 regarding the privacy or confidentiality of any information or material
29 provided to the department, and any privilege arising under federal or
30 state law, including the rules of any federal or state court, with
31 respect to that information or material, continues to apply to the
32 information or material after the information or material has been
33 disclosed to the department. If consistent with applicable law, the
34 information and material may be shared with all state and federal
35 regulatory officials without the loss of privilege or the loss of
36 confidentiality protections provided by federal law or state law.

1 (2) When the department is a party to a memoranda of understanding
2 or enforcement order issued by the consumer financial protection
3 bureau, the privacy, confidentiality, or privilege accorded to the
4 document by federal law continues to apply even after the memoranda or
5 order has been signed by the director or a designee.

6 (3) Any requirement under chapter 42.56 RCW relating to the
7 disclosure of confidential supervisory information or any information
8 or material described in subsection (1) or (2) of this section that is
9 inconsistent with subsection (1) or (2) of this section is superseded
10 by the requirements of this section.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 31.45 RCW
12 to read as follows:

13 Each licensee on a nationwide licensing system shall submit reports
14 of condition which must be in the form and must contain the information
15 as the director may require.

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