

HOUSE BILL REPORT

ESSB 6166

As Reported by House Committee On:
Financial Institutions & Insurance
Appropriations

Title: An act relating to mortgage brokers and loan originators.

Brief Description: Regulating mortgage brokers and loan originators.

Sponsors: Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Fairley, Benton, Prentice, Keiser, Franklin, Berkey, Brandland and Benson; by request of Department of Financial Institutions).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/16/06 [DP];

Appropriations: 2/20/06, 2/23/06 [DP].

Brief Summary of Engrossed Substitute Bill

- Requires the annual expiration of mortgage broker licenses and creates a renewal process.
- Expands the time-frame during which the Director of the Department of Financial Institutions (Director) may conduct a compliance examination of mortgage broker licensees.
- Requires licensing of loan originators.
- Applies prohibited practice standards to loan originators.
- Provides the Director with various specific grants of rule-making authority.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 10 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, O'Brien, Santos, Serben, Simpson and Strow.

Staff: Jon Hedegard (786-7127).

Background:

Licensure of Mortgage Brokers.

In order to make a loan in Washington, mortgage brokers must be licensed. The license does not expire and is not renewed. Mortgage brokers must pay an annual fee to maintain licensure. If the fee is not paid, the Department of Financial Institutions (DFI) must initiate proceedings to revoke the license. Designated brokers of every licensee must complete continuing education requirements. Mortgage brokers are subject to prohibited practices. Requirements for mortgage brokers generally include honesty, veracity, provision of required disclosures, and compliance with appropriate state and federal laws and rules.

Loan Originator.

Loan originators are employed, retained, or represent a person required to have a mortgage broker license in the performance of specific activities relating to a residential mortgage loan. Loan originators are not licensed.

Sanctions.

The Director of the DFI (Director) must enforce all laws and rules relating to the licensing of mortgage brokers. The Director may impose fines or order restitution. The Director may deny, suspend, or revoke licenses.

Compliance Examinations.

The DFI may only examine the business of a mortgage broker once in the first two years of operation as a licensee. However, there has been no funding mechanism for these examinations and therefore no functioning program has been established. The bill provides the Director with compliance examination authority during the first five years of licensure or during the first five years after the licensee opens any new branch.

Investigations.

The DFI may, at any time, investigate complaints against a licensee or any other person in the business of mortgage brokering.

Cooperation with Examinations and Investigations.

The Director or a designee may direct the production of materials relevant to the investigation or require a person to testify under oath. A subpoena may be issued if the materials are not produced or if a person does not testify after being ordered to do so. No person may remove, withhold, or destroy requested materials.

Mortgage Brokerage Commission (Commission).

The Commission advises the Director on the characteristics and needs of the mortgage brokerage profession. The Commission consists of five members appointed by the Director. At least three members must be mortgage brokers.

Summary of Bill:

Licensure of Mortgage Brokers.

Applicant information - In addition to information currently required in an application, mortgage broker applicants must provide their fingerprints, personal history, business record and other information required by the Director. The Director must submit the information for a state and federal criminal history background check. The Director may receive nonconviction information but may only disseminate that information to criminal justice agencies.

License expiration and renewal - Mortgage broker licenses expire annually. The Director must adopt rules for the license renewal process.

Continuing education - The Director may allow outside professional organizations to provide continuing education to designated brokers. The Director may allow for reciprocity with other states' continuing education requirements.

Prohibited practices - Added to the prohibited practices are failure to comply with specific federal laws.

Loan Originators.

Definition - The definition of loan originator is changed to include anyone who does (or is held out as able to):

- take a residential mortgage application from a broker; or
- offer or negotiate terms of mortgage loan for direct, indirect compensation, or the expectation of compensation.

Licensing - Loan originators must be licensed. The application must include the applicant's name, date of birth, social security number, fingerprints, personal history, business record and other information required by the Director. The Director must submit information for a state and federal criminal history background check. The Director may receive nonconviction information but may only disseminate that information to criminal justice agencies.

The applicant must pay an application fee established by rule by the Director. The Director must adopt rules regarding procedures relating to incomplete applications. The Director must adopt rules regarding the content of a written examination.

The Director must issue the license if the application is complete, the applicant passed the written examination, and the fee is paid unless:

- the applicant has had a similar license revoked within seven years of the application;
- the applicant has been convicted of a gross misdemeanor regarding dishonesty or financial misconduct or felony within seven years of the application; or
- the applicant has not been able to demonstrate the character and general fitness required to warrant a belief that the business will be operated honestly and fairly.

Loan originator licenses expire and must be renewed. Loan originator licenses may not be assigned or transferred. Licensees seeking to renew their license must complete the required continuing education requirements. The continuing education requirements must be adopted by rule of the Director.

Prohibited practices - Loan originators are subject to the same prohibited practices as mortgage brokers. Loan originators may not accept any compensation from a borrower for the preparation, negotiation, and brokering of a loan. Loan originators may only take applications on behalf of one mortgage broker at a time. The mortgage broker must be clearly identified on the application.

Ability to contractually bind mortgage brokers - Contracts between a loan originator and a borrower must be in writing and contain the entire agreement. The contract is binding on the mortgage broker.

Sanctions.

The Director may enforce all laws and rules relating to the licensing of mortgage brokers and loan originators. The Director may impose fines or order restitution. The Director may deny, suspend, or revoke a license.

Compliance Examinations.

The DFI may only examine the business of a mortgage broker once in the first five years of being licensed, including the licensing of a branch. The scope of the examination is limited to compliance with the laws and rules related to mortgage brokers. The scope or time-frame may be expanded upon the clear identification of a need to do so. The Director must establish rules regarding protocols of examination findings and corrective actions. The reports must include a process for clear notification of violations to the licensee and an opportunity for the licensee to respond.

The Director may consider reports made by an independent professional that cover the same subject as the examination and incorporate all or part of the independent report into the examination report. The Director may retain attorneys, auditors, or other professionals to aid in an investigation or examination.

Investigations.

A complaint does not have to enable the DFI to investigate a licensee or any other person in the business of mortgage brokering.

Cooperation with Examinations and Investigations.

The Director or a designee may direct the production of materials relevant to the investigation or require testimony under oath of a person. A person who removes, withholds, or destroys requested materials is guilty of a class B felony or punishable by a fine of not more than \$20,000 or both.

Mortgage Brokerage Commission (Commission).

The Commission is expanded to seven members appointed by the Director. At least two members must be loan originators.

Annual Reports by Licensees.

Annually, licensees must provide the Director with a report of mortgage broker activity. The Director may establish the format by rule. The report may only include the total number of closed loans and total dollar volume of closed loans originated by the mortgage broker in

Washington. Any information that is a trade secret is exempt from public disclosure unless aggregated in a manner that the individual broker's information is not identifiable.

The Director may take the actions necessary to implement the act upon the date the act becomes effective.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect January 1, 2007.

Testimony For: This bill is exactly the same as the companion that passed the House. The bill has broad support from interested parties. Washington Realtors support the bill. The Realtors also supported the companion. Please now move this bill. The mortgage broker community has worked with the DFI and interested parties for the last eight months on this bill. We support the bill and ask for your support.

Testimony Against: None.

Persons Testifying: Steve Buckner, Washington Association of Mortgage Realtors; Bob Mitchell, Washington Realtors; and Chuck Cross, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 31 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan, Talcott and Walsh.

Staff: Elisabeth Donner (786-7137).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Financial Institutions & Insurance:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect January 1, 2007.

Testimony For: There is broad support from the entire real estate industry. The Department of Financial Institutions will collect enough revenue to cover the costs of implementing the legislation.

Testimony Against: None.

Persons Testifying: Steve Buckner, Washington Association of Mortgage Brokers; and Chuck Cross, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.