

HOUSE BILL REPORT

SHB 1328

As Passed House:
March 7, 2013

Title: An act relating to the department of financial institutions' regulation of mortgage brokers and clarifying the department's existing regulatory authority regarding residential mortgage loan modification services.

Brief Description: Regulating mortgage brokers.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Kirby, Ryu and Maxwell; by request of Department of Financial Institutions).

Brief History:

Committee Activity:

Business & Financial Services: 1/29/13, 1/30/13, 2/19/13 [DPS].

Floor Activity:

Passed House: 3/7/13, 95-2.

Brief Summary of Substitute Bill

- Expands the authority of the Director of the Department of Financial Institutions to impose sanctions for violations of the Mortgage Brokers Practices Act (MBPA).
- Modifies an exemption to the MBPA.
- Removes a limitation on the period of time to seek recovery against the bond of a licensee.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Kirby, Chair; Ryu, Vice Chair; Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Chandler, Habib, Hawkins, Hudgins, Hurst, Kochmar, MacEwen, O'Ban and Stanford.

Minority Report: Without recommendation. Signed by 1 member: Representative Santos.

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.

Staff: Jon Hedegard (786-7127).

Background:

The Department of Financial Institutions (DFI) regulates mortgage brokers and loan originators under the Mortgage Brokers Practices Act (MBPA).

Licensure of Mortgage Brokers.

In order to make a loan in Washington, mortgage brokers must be licensed. There are a number of exemptions from licensing under the MBPA. One exemption is an attorney licensed to practice law in this state, who is not principally engaged in the business of negotiating residential mortgage loans, when such attorney renders services in the course of his or her practice as an attorney.

Mortgage broker licenses expire annually. The Director of the DFI (Director) must adopt rules for the license renewal process.

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.

A mortgage broker must maintain a minimum bond amount. The Director may establish a range of bond amounts based on the dollar amount of loans originated by the licensee. If the Director determines that the required bonds are not reasonably available, the Director must waive that requirement. A suit may be brought against the surety bond by the Director or an aggrieved party for a violation of the MBPA or rules adopted by the Director to implement the MBPA. A suit must be brought within a year of the alleged violation.

Mortgage brokers must pay an annual fee to maintain licensure. If the fee is not paid, the DFI must initiate proceedings to revoke the license. Designated brokers of every licensee must complete continuing education requirements. Requirements for mortgage brokers generally include honesty, veracity, provision of required disclosures, and compliance with specific state and federal laws and rules. Mortgage brokers must maintain financial records for at least 25 months.

Loan Originator.

Loan originators are employed or retained by 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 must be licensed. Loan originator licenses expire and must be renewed. Loan originator licenses may not be assigned or transferred. Licensees seeking to renew their licenses must complete the required continuing education requirements.

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.

Fees.

The Director is required to establish fees sufficient to cover, but not exceed, the costs of administering the MBPA. These fees may include:

- an application fee to cover the costs of processing applications;
- an annual assessment paid by each licensee on or before a date specified by rule; and
- an investigation fee to cover the costs of any investigation of a licensee or other person. An investigation fee is only charged when the investigation determines that there has been a violation of the MPBA and the Director issues an order.

Any increase in fees is subject to the prior legislative approval required by the various tax and fee initiatives passed in recent years, most recently Initiative 1185 which passed in 2012.

Sanctions.

The Director may impose fines or order restitution for violations of specific provisions of the MBPA. The Director may prohibit an officer, principal, employee, loan originator or mortgage broker from participating in the affairs of a licensed mortgage broker for violations of specific provisions of the MBPA.

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.

Investigations.

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

Summary of Substitute Bill:

Modifications are made to the definitions of "borrower" and "mortgage broker."

Attorney Exemption.

The attorney exemption is modified. An attorney is exempt from licensing requirements if the following requirements are met:

- all mortgage broker or loan originator services (services) must be performed by the attorney while engaged in the practice of law;
- all services must be under a business that is publicly identified and operated as a law practice; and
- all funds associated with the transaction and received by the attorney must be deposited in, maintained in, and disbursed from a trust fund to the extent required by rules regulating the conduct of attorneys.

The requirement that licensees must comply with specific federal laws is replaced with a general requirement to comply with applicable state and federal laws.

Mortgage brokers must maintain financial records for at least three years.

Sanctions.

The Director may impose fines or order restitution for any violations of the MBPA. The Director may prohibit an officer, principal, employee, loan originator or mortgage broker from participating in the affairs of a licensed mortgage broker for any violations of the MBPA.

Surety Bond.

The provision limiting the time to bring a suit against a licensee's surety bond to within a year of the alleged violation is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) About seven years ago, the Legislature made significant changes to the MBPA. Those changes helped Washington avoid many of the lending abuses that were seen in many other states. This bill includes a number of technical changes designed to align state law with federal law. There are changes that apply to people who modify loans. There is a change to the bonding provisions. Current law limits the ability of a consumer to recovery. The consumer may not be aware of the violation within that time-frame. A major component of the bill is a fee increase. Mortgage brokers are supposed to pay for the cost of their regulation. The fees have not been raised in quite some time and the current amount of revenue is about \$1 million short each year. Unlike other DFI licensees, investigation fees are not being recovered. The DFI has been discussing the issue with mortgage brokers for about five years. The industry has been through some tough times and the DFI was asked to hold off on a bill. This year, the mortgage brokers indicated that they are willing to have the conversation with the Legislature. The fees will be set by rule and the amounts of those fees have been tentatively agreed to by the DFI and the mortgage brokers.

(Neutral) Mortgage brokers were in favor of this bill when asked about it as it was being developed. They are being polled again on the subject. Mortgage brokers have a very strong relationship with the DFI. The DFI has always worked in a collaborative, fair manner. Mortgage brokers support the technical provisions of the bill and want to see an equitable solution to the fee issue.

(Opposed) None.

Persons Testifying: (In support) Representative Kirby, prime sponsor; and Deb Bortner, Department of Financial Institutions.

(Neutral) Marty Lough, Washington Association of Mortgage Professionals.

Persons Signed In To Testify But Not Testifying: None.