

HOUSE BILL REPORT

HB 2643

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to necessary information for licensing actions by the department of financial institutions.

Brief Description: Requiring information for licensing actions by the department of financial institutions.

Sponsors: Representatives Schual-Berke and Benson; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/30/04, 2/4/04 [DPS].

Brief Summary of Substitute Bill

- Clarifies the Department of Financial Institutions statutory authority to receive criminal history background information from the Federal Bureau of Investigations, pursuant to Public Law 92-544.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Schual-Berke, Chair; Simpson, G., Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Hatfield, Roach and Simpson, D.

Minority Report: Without recommendation. Signed by 2 members: Representatives Cooper and Santos.

Staff: Carrie Tellefson (786-7127).

Background:

Public Law 92-544 was passed by Congress in 1972. It is an appropriation statute that provides funding to the Federal Bureau of Investigations (FBI) for acquiring, collecting, classifying, preserving, and exchanging identification records with duly authorized federal officials, the states, local governments, and other institutions. Under the federal law, certain state agencies have the ability to obtain federal criminal background checks under certain

conditions. First, there must be a state law authorizing such background checks. Second, the authorizing state statute must be approved by the Attorney General of the United States.

Regulations implementing this law give the director of the FBI the power and authority of the Attorney General to approve and conduct exchanges of identification records with officials of state and local governments for employment and licensing purposes, if authorized by a state statute that has met the approval of the Attorney General.

The FBI has established the mandatory elements of a state statute enacted under the auspices of Public Law 92-544. The state statute must:

- exist as a result of legislative enactment;
- require that the criminal background check be fingerprint-based;
- authorize the submission of fingerprints to the state identification bureau (the Washington State Patrol (WSP), in this case) for forwarding to the FBI for a national criminal history check;
- identify the categories of licensees amenable to backgrounding; and
- provide that an authorized government agency be the recipient of the results of the record check.

The Department of Financial Institutions (DFI) regulates financial institutions, including commercial banks, trust companies, savings banks, savings and loan associations, consumer loan companies, mortgage brokers, payday lenders, state-chartered credit unions, and securities investments. It protects consumer's interests through its licensing, examination, compliance, supervisory responsibilities, and enforcement actions. It also handles consumer complaints, conducts investigations, and takes appropriate action to combat fraud. Part of its licensing process includes conducting background investigations on those applying for a license.

The DFI currently has authority to receive, and does receive, criminal background information from the WSP and the FBI. This authority is found in several places throughout the DFI's code.

Summary of Substitute Bill:

Provides specific authorization for the DFI to request various information from license applicants, including fingerprints, criminal history, personal history, experience, business records, and other information as the director may require.

The fingerprint information may be submitted to the WSP and the FBI for a state and national criminal history background check, and any governmental agency that is authorized to receive this information.

This provision does not apply to banks, mutual savings banks, savings and loan associations, or credit unions.

Substitute Bill Compared to Original Bill:

The provision authorizing the DFI to receive criminal history record information containing nonconviction data is removed. The language stating that the DFI may only release nonconviction data obtained under this authority to criminal justice agencies is removed.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The DFI worked with the WSP to develop language for this bill. It is boilerplate language that the FBI requires. It clarifies the authority they already have. The DFI gets this information currently, but there has been some discussion about the FBI's ability to continue to give them this information. Conviction and nonconviction data are both provided to the DFI from the FBI. With respect to nonconviction data, in order for the DFI to take action against a license based on nonconviction data, they would have the burden of proof. Approximately 100,000 agents are licensed. The DFI processes 400 applications a month and out of those, about 50 come back with criminal history record information. The licensing statutes require that the applicant not be a felon and be fit to handle other people's money. This bill clarifies their authority to do background checks - to do what they already do. Applicants with criminal histories should not be allowed to handle money.

This is the language that the FBI says they need. There isn't anything in this language that gives them authority that is any different than what they have now. If they were to use nonconviction data alone, they would need to prove their case. If the Legislature doesn't pass this bill, it could go on exactly the same as it has been, or they could possibly lose their ability to receive this information. They currently have the right to "examine" securities agents. The FBI has been relying on that language to give them the criminal history record information. Applicants are also required to answer the question "have you committed a felony?"

The reason they need nonconviction data is that a person may have recently moved to Washington and have pending charges in another state. This would not show up in the WSP background information because its from another state. It would only show up in the nonconviction data from the FBI.

(In support with concerns) The mortgage brokers have not yet decided, as an association, whether they support this bill. They would like to see restrictions on the use of nonconviction data. For example, they could issue a license when pending charges have not been resolved and make it subject to summary suspension if a conviction is the result. The mortgage brokers would like a compromise on this issue.

Testimony Against: None.

Persons Testifying: (In support) Deborah Bortner and Chuck Cross, Department of Financial Institutions.

(In support with concerns) Jim Brown, Washington Association of Mortgage Brokers.

Persons Signed In To Testify But Not Testifying: None.