
**Financial Institutions &
Insurance Committee**

HB 2734

Brief Description: Addressing mortgage brokers.

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

Brief Summary of Bill

Updates the Mortgage Broker Practices Act in the following manner:

- Provides that mortgage broker licenses are annual licenses.
- Clarifies the directors authority with respect to licensing actions and sanctions for violation of the act.
- Clarifies the basis upon which the director may investigate a licensee.
- Makes various technical corrections and clarifications.

Hearing Date: 1/30/04

Staff: Carrie Tellefson (786-7127).

Background:

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.

The Mortgage Broker Practices Act (Act) establishes a state system to regulate and license mortgage brokers. The Act requires licensing of each mortgage office doing business in Washington, regardless of their physical location. The Act protects consumers by requiring that mortgage brokers fully disclose the terms of loans, ensuring that mortgage brokers place in trust fees taken for third party service providers (such as appraisers) and by prohibiting mortgage brokers from engaging in unfair and deceptive acts and practices.

Mortgage broker licenses currently do not expire, although DFI collects an annual license fee. When a mortgage broker fails to pay the annual fee, DFI must take administrative action to revoke the license.

The DFI director may impose sanctions for violations of various provisions of the Act. The director's authority is specifically enumerated, setting forth the sanctions, such as denial, suspension, or revocation of a license, and the specific violations that correspond to each sanction. The director is authorized to investigate and examine mortgage brokers for the purposes of investigating complaints.

Certain entities are exempt from the provisions of the Act, such as banks, savings banks, trust companies, credit unions, savings and loan associations, insurance companies, and real estate investment trusts. Although they are exempt, they may not participate in unfair, deceptive, or fraudulent acts.

Summary of Bill:

Exempts federal insured banks doing business under the laws of another state from the provisions of this chapter.

Provides that entities that are exempt from the Act (banks, etc) must comply with certain requirements of this act, including the following:

- providing written disclosures of fees and costs,
- requiring the contract between the mortgage broker and borrower to be in writing,
- requiring the entity to keep third party payments (e.g. appraisers) in trust accounts,
- requiring the use of generally accepted accounting principles and keeping accurate and current books, and
- restrictions on fees and commissions.

Broadens the scope of the list of prohibited practices (acts that are unfair, deceptive, or fraudulent) beyond just the acts that occur in connection with a mortgage loan: A mortgage broker may not participate in any of these acts under any circumstances.

Requires that a designated mortgage broker must supervise the activities of licensed mortgage brokers.

Creates an expiration date for mortgage broker licenses and requires the director to create rules for license renewals.

Provides that when an applicant is applying for a mortgage license, the applicant's principals and designated mortgage broker are also subject to the same licensing requirements as the applicant.

Provides that the director is authorized to impose fines, order restitution, and suspend, deny, or revoke licenses for any violation of the Act.

Authorizes the director to examine and investigate a mortgage broker for "apparent" violations of the Act, in addition to investigating "complaints." Apparent violations include those that are obvious, evident, open to view, visible to the eye, within site or view, plain, or known. The director may investigate apparent violations during regular business hours at the mortgage broker's place of business and may view books, accounts, records, as well as interview employees or independent contractors. The director may also issue subpoenas.

Increases the standard relating to a licensee's withholding of documents or records to make punishable "knowing" withholding of documents or records. Specifies that the "knowing" actions under this subsection amount to a class B felony punishable by confinement of 10 years or a fine of not more than \$20,000 or both.

Appropriation: None.

Fiscal Note: Not requested.

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