

SENATE BILL REPORT

SB 5118

As Reported By Senate Committee On:
Financial Services, Insurance & Housing, February 20, 2003

Title: An act relating to the mortgage lending fraud prosecution account.

Brief Description: Providing funds to investigate and prosecute real estate fraud crimes.

Sponsors: Senators Prentice, Winsley, Reardon, Schmidt, Esser, Zarelli and Keiser.

Brief History:

Committee Activity: Financial Services, Insurance & Housing: 2/6/03, 2/20/03 [DPS].
Ways & Means: 3/6/03.

SENATE COMMITTEE ON FINANCIAL SERVICES, INSURANCE & HOUSING

Majority Report: That Substitute Senate Bill No. 5118 be substituted therefor, and the substitute bill do pass.

Signed by Senators Benton, Chair; Winsley, Vice Chair; Keiser, Prentice and Zarelli.

Staff: Alison Mendiola-Hamilton (786-7576)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Kirstan Arestad (786-7708)

Background: Mortgage fraud, a type of "predatory lending," has gained nationwide attention in the past decade. Mortgage fraud generally involves the use of deceptive or fraudulent sales practices in the origination of a loan secured by real estate. Consumer advocates are concerned that such fraudulent loans threaten accomplishments made in community revitalization and home ownership across all segments of society.

Mortgage fraud may include loaning money without regard to the borrower's ability to repay, charging excessive rates and fees to a borrower who may in fact qualify for lower rates or fees, adding unnecessary coverage like single premium credit insurance, or failing to disclose the true terms of the loan.

Under Washington law, there are three acts which may be used to curb fraudulent mortgage lending practices. These laws include the Consumer Protection Act, the Mortgage Brokers Practices Act, and the Consumer Loan Act. Despite these laws, there is concern that enforcement resources are limited, leaving the door open to mortgage fraud.

Summary of Substitute Bill: The mortgage lending fraud prosecution account is created. The purpose of this account is to fund criminal prosecution of mortgage lending fraud crimes.

Funds for this account come from a \$1.00 surcharge imposed by county auditors for recording deeds of trust. The auditor may retain up to 5 percent of the funds collected to administer collection, and the remaining funds are deposited, via the State Treasurer, into the mortgage lending fraud prosecution account.

The Department of Financial Institutions (DFI) is responsible for the distribution of the funds. The Department, in consultation with the Attorney General and local prosecutors, develops guidelines for use of the funds to enhance its capacity to pursue criminal prosecution of fraudulent activities within the mortgage lending process. The department works with the Attorney General and local police to investigate and prosecute claims of mortgage lending fraud stemming from consumer complaints.

DFI makes a written report to the Legislature annually regarding the use of the funds, commencing December 31, 2004.

The mortgage lending fraud prosecution account and the accompanying \$1.00 surcharge expire on June 30, 2006.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Requested on February 3, 2003.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This account is needed to prevent fraud. The surcharge will generate the money needed to protect consumers. Mortgage brokers already pay a large fee. The bad apples aren't necessarily licensed in this state.

Testimony Against: Surcharges should not come from recording deeds of trust, the money should come from the industry. Concerns: This surcharge should only be applied to single family owner-occupied homes.

Testified: PRO: Jim Brown, Dale Miller, Washington Association of Mortgage Brokers; Adam Stern, America Brokerage; CON: Kris Swanson, Washington State Association of County Auditors; Bob Terwilliger, Sno. Co. Auditor; Terry Kohl, Washington Apartment Association (concerns); Mark Thomson, DFI (neutral).