

# HOUSE BILL REPORT

## SHB 1749

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### As Amended by the Senate

**Title:** An act relating to regulating the business practices of mortgage brokers for compliance with the secure and fair enforcement for mortgage licensing act of 2008.

**Brief Description:** Regulating the business practices of mortgage brokers for compliance with the secure and fair enforcement for mortgage licensing act of 2008.

**Sponsors:** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Bailey and Kirby).

#### Brief History:

##### Committee Activity:

Financial Institutions & Insurance: 2/3/09, 2/12/09 [DPS];  
General Government Appropriations: 2/25/09 [DPS(FII)].

##### Floor Activity

Passed House: 3/5/09, 97-0.  
Senate Amended.  
Passed Senate: 3/31/09, 48-0.

#### Brief Summary of Substitute Bill

- Modifies licensing, education, and background check standards for mortgage brokers and loan originators.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Roach, Rodne, Santos and Simpson.

**Staff:** Jon Hedegard (786-7127)

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### HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

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*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.*

**Majority Report:** The substitute bill by Committee on Financial Institutions & Insurance be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong, Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

**Staff:** Serah Stetson (786-7109)

**Background:**

The Department of Financial Institutions (DFI) licenses mortgage brokers and loan originators under the Mortgage Broker Practices Act (MBPA). The MBPA has provisions regarding licensing, continuing education, prohibited practices, examinations, investigations, and criminal, civil, and administrative penalties for mortgage brokers and loan originators.

The DFI currently requires all mortgage brokers and loan originators to file license applications through the Nationwide Mortgage Licensing System (NMLS). The NMLS was created in 2004 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The NMLS began operations in January of 2008. According to the NMLS, 42 states are current members or have signed a Statement of Intent regarding their participation in the NMLS.

On July 30, 2008 President Bush signed House Resolution 3221 (P.L. 110-289). Title V of House Resolution 3221 is referred to as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). Under the SAFE Act, all states must have a system of licensing in place for residential mortgage loan originators by August 1, 2009, that meets national definitions and minimum standards, including:

- criminal history and credit background checks;
- pre-licensure education;
- pre-licensure testing;
- continuing education;
- net worth, surety bond or recovery fund; and
- licensing mortgage loan originators through a Nationwide Mortgage Licensing System and Registry (NMLS&R).

The Secretary of the U.S. Department of Housing and Urban Development is required to establish and maintain a backup licensing and registration system for loan originators operating in a state that:

- does not have a licensing and registering system for loan originators that meets the requirements of the SAFE Act; or
- does not participate in the NMLS&R.

**Summary of Substitute Bill:**

The definition of "loan originator" is modified. Additionally, new definitions are created.

Applications for a mortgage broker or a mortgage loan originator license must be made through the NMLS&R. An application for a mortgage broker or a mortgage loan originator

license must include fingerprints and other specific background information. The Director of the Department of Financial Institutions (Director) may adopt rules regarding licensing. Applicants must use a form prescribed by the Director. The Director may establish contracts with the NMLS&R to collect and maintain records and fees related to licensees.

An applicant must:

- complete minimum pre-licensing education requirements approved and administered by the NMLS&R; and
- pass a test developed by the NMLS&R and administered by a provider approved by the NMLS&R.

A mortgage loan originator licensee must meet minimum continuing education requirements approved and administered by the NMLS&R. The Director must establish other standards by rule for license renewal.

The Director must establish a process for mortgage loan originators to challenge the information entered into the NMLS&R by the Director.

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.

Each mortgage loan originator must register with and maintain a unique identifier.

The information and materials used for the NMLS&R are subject to existing state and federal laws even after provided to the NMLS&R. Information may be shared by the Director with other governmental agencies and regulatory associations without a loss of any privilege or confidentiality under the law.

Specific entities and their employees are exempt from the MBPA.

#### **EFFECT OF SENATE AMENDMENT(S):**

If the Director determines that the required surety bond is not reasonably available, the Director must waive that requirement. The Mortgage Recovery Fund Account (MFRA) is created and the Director is authorized to charge fees to fund the MFRA. Expenditures, other than expenditures required to administer the MFRA, may only be made for the same purposes as the surety bond. A person may only receive reimbursement from the MFRA after a court has determined the actual damages caused by the licensee. The Director may adopt rules regarding (1) the procedure for recovery, (2) the amount each mortgage broker must pay for deposit in the MFRA, and (3) the amount necessary to administer the MFRA.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed, except sections 4, 9, 12 14, and 17, relating to requiring licensure and applications using the NMLS&R, and sections 6, 7, 8 and 11, relating to mortgage loan originator

prelicensure education, testing, and continuing education, which take effect on January 1, 2010.

**Staff Summary of Public Testimony (Financial Institutions & Insurance):**

(In support) This bill is similar to House Bill 1621. If the state does not act, the federal government will step in and regulate mortgage brokers. Local regulation is better for consumers and businesses. This addresses the same types of issues as House Bill 1621. The Legislature reformed the regulation of mortgage brokers in 2007. Industry worked with the DFI on many of these issues. Because of that work, many of the protections and structures are in place already. Mortgage brokers in Washington are in a better place than mortgage brokers in other states. There were some technical issues that have been resolved. This is a logical next step for the regulation of mortgage brokers. In 2007 mortgage professionals worked with the DFI and the Legislature. Mortgage professionals would like to thank the DFI and the Legislature for working again on these important issues.

(With concerns) People who sell manufactured housing are not normally thought to be real estate professionals. There is a concern that current bill definitions and exemptions do not clearly exclude people who sell manufactured housing. There is an exemption for persons who sell real property but a manufactured home is generally viewed as personal property when sold. People who sell manufactured housing are not loan originators but would be considered loan originators if they merely provided a form. Oregon looked at this issue in the context of the SAFE Act and provided an exemption for people who sell manufactured housing. At this point, a thorough discussion with the DFI is the next step.

**Staff Summary of Public Testimony (General Government Appropriations):**

(In support) Either the state controls regulation for these entities or the federal government will do so. The DFI already licenses loan originators, and these licenses generate enforcement actions resulting in fines and sanctions that increase revenue. There is a bond requirement that is close to that required of Consumer Loan Act licensees so some licensees may become Consumer Loan Act licensees because they could make more money, generating additional revenue. This bill means having only one taskmaster under the SAFE Act, which would be the DFI.

(Opposed) None.

**Persons Testifying (Financial Institutions & Insurance):** (In support) Representative Bailey, prime sponsor; Deb Bortner, Department of Financial Institutions; and Marty Lough and Steve Buckner, Washington Association of Mortgage Professionals.

(With concerns) Mike Ryherd, Northwest Housing Association.

**Persons Testifying (General Government Appropriations):** (In support) Representative Bailey, prime sponsor; Steve Buckner, Washington Association of Mortgage Professionals; and Deborah Bortner, Department of Financial Institutions.

**Persons Signed In To Testify But Not Testifying (Financial Institutions & Insurance):**  
None.

**Persons Signed In To Testify But Not Testifying (General Government Appropriations):**  
None.