

# SENATE BILL REPORT

## SB 5299

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As of January 22, 2015

**Title:** An act relating to updating, clarifying, and strengthening department of financial institutions' enforcement, licensing, and examination statutes relating to residential mortgage lending, and enhancing the crime of mortgage fraud in the residential mortgage lending process.

**Brief Description:** Updating, clarifying, and strengthening department of financial institutions' enforcement, licensing, and examination statutes relating to residential mortgage lending, and enhancing the crime of mortgage fraud in the residential mortgage lending process.

**Sponsors:** Senators Benton, Mullet, Fain, Darneille, Hobbs, Angel and Conway; by request of Department of Financial Institutions.

**Brief History:**

**Committee Activity:** Financial Institutions & Insurance: 1/21/15.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Staff:** Shani Bauer (786-7468)

**Background:** Escrow Agent Registration Act. An escrow agent is a neutral third party that may hold funds or documents or other things of value until the occurrence of a specified event or the performance of a prescribed condition. The escrow agent acts for the purpose of effecting or closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another. Escrow agents must be licensed by the Department of Financial Institutions (DFI).

The applicant for an escrow agent license must include, among other things, the qualifications and the business history of the applicant and all of its officers, directors, owners, partners, and controlling persons; whether the applicant has been convicted of any crime within the preceding ten years; and evidence of compliance with the bonding and insurance requirements.

Mortgage Fraud. In 2007 the Task Force for Homeowner Security (task force) convened to evaluate instability in the mortgage market and minimize the impact in Washington. The task force made several recommendations, including increasing the penalties for mortgage fraud. Many of the task force's recommendations were enacted in 2008.

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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.*

It is a criminal offense to engage in deceptive practices in connection with making, brokering, obtaining, or modifying a residential mortgage loan. A person commits mortgage fraud if the person materially misleads any borrower or lender during the lending process; knowingly makes any misstatement, misrepresentation, or omission during the mortgage lending process, knowing that it may be relied on by the mortgage lender, borrower, or any other party to the process; or receives proceeds or anything of value in connection with a residential mortgage closing that such person knew resulted from a prohibited misstatement, misrepresentation, or omission. The offense of mortgage fraud is a class B felony, which carries a maximum sentence of ten years and a \$20,000 fine.

Mortgage Broker Practices Act. The Mortgage Broker Practices Act (MBPA), codified in RCW 19.146, establishes a regulatory and licensing structure for mortgage brokers that is overseen by DFI. A mortgage broker is any person who assists a person in obtaining or applying to obtain a residential mortgage loan or performs residential mortgage loan modification services or who holds himself or herself out as performing such services and does so for direct or indirect compensation.

Under MBPA, mortgage brokers must fully disclose the terms of loans, ensure that mortgage broker fees collected for third-party service providers are placed into bank trust accounts, and refrain from engaging in unfair and deceptive acts and practices.

A licensee must provide the Director of DFI (Director) with an annual report of its mortgage broker activity. The Director may, by rule, create a schedule and format for the annual report. A loan originator may only take an application on behalf of one mortgage broker at a time, and the mortgage broker must be clearly identified on the application.

Consumer Loan Act. The Consumer Loan Act (CLA) authorizes DFI to regulate consumer loan companies who conduct business in Washington, and it governs the licensing of mortgage loan originators. Consumer loan companies include mortgage lenders and consumer finance companies. A mortgage loan originator is an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

CLA limits the rates and fees lenders may charge on loans, restricts certain loan provisions such as prepayment penalties, requires lenders to fully disclose the terms of loans, and prohibits lenders from engaging in unfair and deceptive acts and practices.

A violation of either MBPA or CLA is a violation of the Washington Consumer Protection Act.

**Summary of Bill:** Escrow Agent Registration Act. The Director may waive the licensing provisions for escrow agents if the Director determines it necessary to facilitate commerce or protect consumers.

Mortgage Fraud. Mortgage lending process and residential mortgage loan modification are defined to include a broad range of activities and documents involved in the lending process.

Filing a false document with the county recorder or official registrar of deeds of any county of this state constitutes mortgage fraud and is a class B felony.

Venue for an action for a mortgage fraud proceeding may be brought:

- in the county in which the residential property for which the mortgage loan being sought is located;
- in any county in which any act was performed in furtherance of the violation; or
- in any county in which a document containing a misstatement, misrepresentation, or omission was filed.

A person who engages in mortgage fraud activities is also liable for civil damages in the greater amount of \$5,000 or actual damages, including costs to repair the victim's credit and quiet title on the residential property, and reasonable attorney fees. In a proceeding where there has been a conviction for mortgage fraud, the sentencing court may issue orders as necessary to correct the public record containing any false information as a result of the criminal action.

Mortgage Broker Practices Act. Licensee is defined to include a person who failed to obtain a license. A nonprofit housing organization brokering residential mortgage loans under housing programs funded in whole or in part by federal or state programs with the primary purpose of providing housing for low-income residents is exempt from the provisions of MBPA.

It is a violation of MBPA for any person subject to the chapter to:

- originate loans from any unlicensed location;
- solicit or accept from any borrower at or near the time a loan application is taken, and in advance of any foreclosure of the borrower's existing residential mortgage loan or loans, any instrument of conveyance of any interest in the borrower's primary dwelling that is the subject of the residential mortgage loan; or
- make a residential mortgage loan unless the loan is table funded – a loan is table funded when the mortgage broker is named on the mortgage or promissory note as the lender, but is immediately sold to a lender who will provide the actual funding.

The Director may recover the state's costs and expenses for prosecuting violations of MBPA, including staff time spent preparing for and attending administrative hearings and reasonable attorneys' fees, unless, after a hearing, the Director determines no violation occurred. A cease and desist order issued against a licensee may direct the licensee to discontinue any violation and take such affirmative action as is necessary; include a summary suspension of the licensee's license; and order the licensee to immediately cease the conduct of business under MBPA.

RCW 19.146.290 – requiring a licensee to provide the Director with an annual report of mortgage broker activity, and RCW 19.146.330 – limiting the number of applications taken by a loan originator, are each repealed.

CLA. Any person selling bare property owned by that person who provides financing for the sale when the property serves as security for the financing is exempt from the provisions of CLA if the person engages in five or fewer transactions in a calendar year and is not in the

business of constructing homes on the property. A surety bond provided by an applicant for licensing under CLA must be continuous and may be cancelled only upon 45 days written notice of intent to cancel provided to the Director.

In lieu of suspending or revoking a license under CLA, the Director may allow the licensee to have a conditional license to allow the licensee to continue business activities. The Director has the authority to condition, revoke, or suspend only the particular license which is the subject of the violation, or may take action with regard to all licenses issued to the licensee.

A residential mortgage loan services licensee must maintain liquidity, operating reserves, and net worth as determined by the Director. The Director may initiate action if the licensee fails to maintain appropriate liquidity levels. Upon application by the Director, the superior court may appoint a receiver to take over any residential mortgage loan servicer.

Several provisions are amended for consistency with MBPA including:

- affiliate, licensee, loan, and mortgage loan originator are defined;
- the Director may recover the state's costs and expenses for prosecuting violations of CLA; and
- the Director may deny an application for a mortgage loan originator license if the applicant has been convicted of a gross misdemeanor involving dishonesty or financial misconduct.

Technical language throughout is amended and updated.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill attempts to create some consistency for companies who engage in mortgage activities under MBPA and CLA so they can operate under one set of rules. It also streamlines the state's approach to investigating and prosecuting mortgage fraud in order to better protect victims of that fraud. There are two types of fraud cases where this legislation would help. One type of case is where a person files a false deed with the county recorder's office. The person can be charged with a felony under another law, but it would be a more efficient approach to charge the person with mortgage fraud. The legislation would also allow the judge to correct the public record, which will save the person the expense of hiring separate counsel to clear the chain of title. The second type of case is where squatters file fraudulent documents and move into a bank-owned home. This bill would protect the financial institution in order to clear their chain of title. This bill is in the unique position of converging both consumer protection and industry protection interests.

**Persons Testifying:** PRO: Charlie Clark, DFI; Jennifer Atchison, King County Prosecuting Attorney; Hugo Torres, King County Deputy Prosecutor.