

HOUSE BILL REPORT

SSB 5829

As Reported By House Committee On:
Financial Institutions & Insurance
Appropriations

Title: An act relating to mortgage brokers and loan originators.

Brief Description: Licensing mortgage brokers and loan originators.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Moore and Prince).

Brief History:

Reported by House Committee on:
Financial Institutions & Insurance, March 29, 1993, DPA;
Appropriations, April 3, 1993, DPA(FII & APP).

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass as amended. Signed by 14 members: Representatives Zellinsky, Chair; Mielke, Ranking Minority Member; Anderson; Dellwo; Dorn; Grant; R. Johnson; Kessler; Kremen; Lemmon; R. Meyers; Reams; Schmidt; and Tate.

Staff: John Conniff (786-7119).

Background: In 1987, the Legislature adopted the Mortgage Broker Practices Act, which established a variety of disclosure and operational requirements for mortgage brokers doing business in Washington. For example, prior to the receipt of payments from the borrower, a mortgage broker must make a full written disclosure of matters relating to the loan transaction. The act also contains provisions governing fees and other charges, advertising, record keeping, and uncompleted transactions. While governing the practices of mortgage brokers, the act does not require mortgage brokers to be licensed, nor does it govern the activities of mortgage bankers.

Mortgage bankers and mortgage brokers differ in two significant ways. Mortgage bankers generally provide the initial funds for a mortgage and later sell the mortgage on the secondary market. Mortgage brokers seldom loan their own money, finding a lender to extend the credit. Mortgage bankers also are more likely to retain responsibility for

the servicing of the mortgage, e.g., collecting the payments and ensuring property taxes and insurance payments if made.

Summary of Amended Bill: A temporary licensing program for mortgage brokers is established within the Department of Licensing. In addition, mortgage bankers are subject to certain prohibited practices.

Effective October 31, 1993, all mortgage brokers operating in Washington must possess a mortgage broker license. In order to obtain a license, an applicant must complete a written application, pay a licensure fee, and file and maintain a surety bond or approved alternative with the department. The director is authorized to enforce all laws and rules relating to the licensure of mortgage brokers and adopt appropriate rules.

Mortgage brokers are required to be licensed; certain employees of mortgage brokers, and mortgage bankers must comply with delineated unlawful practices. A real estate broker providing information only in connection with a computer loan origination system is exempt from the mortgage broker licensing requirements, but must comply with all rules adopted by the Department of Licensing and with the prohibited practices section of the act. The prohibited acts include making false or deceptive statements and reports, engaging in unfair and deceptive conduct, and failing to comply with federal truth-in-lending requirements.

A mortgage broker is liable for violations of the act by his or her loan originators. The procedures for an aggrieved person to receive payment from the surety bond or approved alternative are specified.

The five-member Mortgage Brokerage Commission is created to advise the director on issues concerning the industry and prepare a report containing legislation to establish an ongoing mortgage brokers' licensing program. In addition to containing recommended legislation, the report must consider other state and federal laws, the type and magnitude of complaints, and the components of a licensure program. The commission must submit its report to the appropriate legislative standing committee by December 1, 1993.

All moneys collected through license fees and fines are to be deposited into the mortgage brokers licensing account, which is created within the treasury. This dedicated account is subject to appropriation. The director is authorized to set license fees sufficient to cover, but not exceed, the costs of administering the program.

If a new department is created with the state financial institution regulators, all powers and duties of the Department of Licensing relating to mortgage brokers are transferred to the new department.

The provisions of this legislation are scheduled to expire October 31, 1994, except the commission will continue to operate if an ongoing licensing program for mortgage brokers is adopted.

Amended Bill Compared to Substitute Bill: A real estate broker providing information only in connection with a computer loan origination system is exempt from the mortgage broker licensing requirements, but must comply with all rules adopted by the Department of Licensing and with the prohibited practices section of the act.

Fiscal Note: Available.

Effective Date of Amended Bill: Sections 2 through 4, 9, 13, and 21 through 32 contain an emergency clause and take effect immediately. The other sections contain several different effective dates. Please refer to the bill.

Testimony For: The attorney general's office has experienced an increase in consumer complaints concerning mortgage brokers. A common complaint is that some mortgage brokers do not pay appraisers and others when the consumer has given the broker money for these services. Rather than wait to perfect a licensing system for mortgage brokers, a temporary system is established until the industry working group recommends a more permanent solution. Real estate brokers should be exempted from these rules for the limited purposes of providing mortgage loan information as part of a computer system developed by the real estate industry.

Testimony Against: None.

Witnesses: Chris Gregoire, Attorney General (pro); Geoff Jackson (pro); Glenn Hudson and David Cantu, Washington Association for Realtors (pro with amendments); James Irish, Real Estate Appraisal Services (pro); Paul Olson, Paul Olson Appraisals (pro); Scott Nelson, Washington Association for Mortgage Brokers (pro); Ken Lindberg, President of Washington Association for Mortgage Brokers (pro); Carmen Tsugui Chan, citizen (pro); Richard Hager, appraiser (pro); and Ed Frankele, citizen (pro).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Financial Institutions & Insurance as further amended by Committee on Appropriations. Signed by 26 members: Representatives Locke, Chair; Valle, Vice Chair; Silver, Ranking Minority Member; Carlson, Assistant Ranking Minority Member; Appelwick; Ballasiotes; Basich; Cooke; Dellwo; Dorn; Dunshee; G. Fisher; Jacobsen; Lemmon; Leonard; Linville; Peery; Rust; Sehlin; Sheahan; Sommers; Stevens; Talcott; Wang; Wineberry; and Wolfe.

Staff: Beth Redfield (786-7130).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Financial Institutions & Insurance: A loan applicant may request, from a lender, copies of all loan documents 24 hours prior to closing. Lenders must advise loan applicants of this ability.

Fiscal Note: Available.

Effective Date: While some sections take effect immediately, others take effect on September 1, 1993, and October 31, 1993.

Testimony For: This bill has been negotiated over the past two or three years; all parties are supportive. The bill is part of the attorney general's package of improvements to consumer protection. Currently, some brokers do not pay appraisers although consumers have paid the broker for this service. By requiring a bond for licensure, this practice will be curtailed.

Testimony Against: None.

Witnesses: Frank Warnke, Washington Association for Mortgage Brokers, (pro); Dave Horn, Office of the Attorney General, (pro); Richard Hager, real estate appraiser (pro); and John Woodring, Washington Association for Realtors (pro).