

SENATE BILL REPORT

SB 5749

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 11, 2009

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: Senators Berkey, Benton and Shin.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/04/09, 2/11/09 [DPS-WM].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5749 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Benton, Ranking Minority Member; Franklin, McDermott, Parlette and Schoesler.

Staff: Diane Smith (786-7410)

Background: The Mortgage Broker Practices Act (Act) gives the Department of Financial Institutions (DFI) the authority to regulate mortgage brokers and loan originators. Loan originators and mortgage brokers assist people in obtaining or applying for mortgage loans on residential property. Mortgage brokers are paid by the mortgage client, the lender, or both, for their assistance. The loan originator is paid by the broker. The mortgage broker must have a written agreement with a lender before doing business. Contracts entered into by the loan originator are binding on the mortgage broker. Loan originators were not licensed until 2007.

Mortgage brokers must satisfy a surety bonding requirement, as established by DFI, that can be from \$20,000 to \$60,000. There is no bonding required of loan originators.

Both mortgage brokers and loan originators must provide fingerprints and other specific background information as part of their licensing application.

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.

A mortgage broker must at all times have a designated broker with responsibility for all activities conducted in the mortgage brokers' business. The designated broker who has supervisory authority over a mortgage broker is responsible for violations of the Act committed by licensees, employees, or independent contractors under certain circumstances. Both designated brokers and loan originators must pass a written examination before they may be licensed.

For the first five years after licensing, the Office of Insurance Commissioner (OIC) may make only one visit to the licensee's place of business to conduct an examination.

An applicant for licensure as a loan originator may not have had a license suspended or revoked within five years of filing the current application for licensure.

Federal legislation, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act), mandates either that the states create a Nationwide Mortgage Licensing System and Registry (Registry) and each state meet federal requirements for licensing and registering loan originators or the Secretary of the Federal Department of Housing and Urban Development (HUD) will license and register loan originators. The purpose of the Registry is to provide a comprehensive licensing, supervisory, and tracking system for loan originators.

The federal legislation has ten objectives. These objectives are uniformity in licensing and reporting requirements for state-licensed loan originators; provision of a comprehensive licensing and supervisory database; improved information flow among regulators; increased accountability and tracking of loan originators; streamlining of the licensing process and reduction of the regulatory burden; enhancement of consumer protections and anti-fraud measures; enhanced and free access for consumers to information about the professional history of loan originators; establishment of a means by which loan originators would be required to act in the best interest of the consumer; facilitation of responsible behavior and comprehensive training and examination requirements in the subprime mortgage market; and facilitation of collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators.

The state licensing law must meet six minimum requirements to comply with federal law. These requirements involve effective state supervision and enforcement of state and federal law; registration of all state-licensed loan originators with the Registry; reporting of violations of law and enforcement actions to the Registry; having a process for challenging information contained in the Registry; and establishment of minimum net worth or surety bonding requirements or establishment of a recovery fund.

The federal law has a one-year deadline, with some exceptions, for states to comply. The deadline date is July 30, 2009.

Summary of Bill (Recommended Substitute): Definitions for the following terms are newly incorporated into the Act: federal banking agencies; loan processor; nationwide mortgage licensing system and registry; and S.A.F.E. Act. The definition of loan originator

is clarified. Modular and mobile home retailers who perform clerical or administrative functions as a courtesy to their customers are exempt from the Act.

Applications for a mortgage broker or a loan originator license must be made through the Registry. In addition to the application for a mortgage broker or a loan originator license, both licensees must include fingerprints and other specific background information periodically upon license renewal.

The application for both the mortgage broker license and loan originator license must be made to the Registry. DFI may use the Registry as the channeling agent for requesting information from, and distributing information to, any governmental agency or any other source.

Roles for the Registry include approval of minimum pre-licensing educational requirements; development of the licensing test; and approval of the provider of the test that applicants must pass in order to become licensed. The loan originator must complete a minimum of eight hours of continuing education. Each applicant must complete a minimum of 20 hours of prelicensing education.

Applicants must use a form prescribed by OIC. OIC may establish contracts with the Registry to collect and maintain records and fees related to licensees.

The applicant for licensure as a loan originator may never have had a license revoked. The applicant must also demonstrate financial responsibility. This means the applicant cannot have shown disregard in the management of his or her own financial condition. This could include current outstanding judgments; tax liens; or foreclosure or a pattern of seriously delinquent accounts within the last three years.

DFI must establish a process by which mortgage loan originators may challenge the information that DFI enters into the Registry.

The minimum and maximum dollar amounts of surety bond a mortgage broker licensee must maintain are removed. OIC must establish a range of bond amount based on the dollar amount of loans originated by the licensee.

The limitation to one visit to the licensee's place of business in the first five years of licensure to conduct an examination is removed.

The information and materials disclosed to the Registry are subject to existing state and federal privacy or confidentiality laws. DFI may share information with other governmental agencies and regulatory associations without the loss of any privilege or confidentiality.

Certain exemptions from the Act are removed, including that for exclusive agents of an affiliate of certain banks.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): Modular and mobile home

retailers who perform clerical or administrative functions as a courtesy to their customers are exempt from the Act.

The Nationwide Mortgage Licensing System and Registry's administrative functions are removed from the bill.

The term "unique identifier" is defined.

Mortgage loan originators are required to be licensed and to have a unique identifier.

In the underlying bill part of the licensing documentation that both mortgage loan originators and mortgage brokers are required to submit information that establishes the originator or broker's identity, including fingerprints. In the list of entities to which this information must be sent, the conjunctive is changed to the disjunctive.

The locations of some sections are changed. Some references are clarified.

The effective date for certain sections imposing new licensing requirements on the professions is delayed to January 1, 2010.

The repealer of the section that exempts exclusive-agent mortgage loan originators from the Act is delayed to July 1, 2010.

DFI's authorization to ensure the Act is implemented by January 1, 2010, is changed to July 1, 2010.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: PRO: If this bill does not pass, mortgage brokers will have two regulators. Due to the Legislature's foresight, we are very well prepared to implement this new federal act. We already participate in the nationwide licensing system. This is a great source of information and transparency about the licensees. The bill requires loan originators to be licensed and levels the playing field. Those who failed the mortgage broker's license went to work for companies licensed under the Consumer Loan Act because they did not have to be licensed there.

OTHER: Mobile home retailers are licensed much like real estate brokers, through the Department of Licensing. They must have a \$30,000 bond. But, the difference is that mobile homes are personal property. These retailers are like dolphins caught in the tuna net. They are not intended to be under the Act, but direct or indirect compensation is not defined. Would the fact that a sale cannot proceed unless financing is arranged be considered indirect

compensation? Mobile home retailers should not be required to get another license for doing the buyer the courtesy of walking across the room to fax an application. More clarity is needed.

Persons Testifying: PRO: Deb Bortner, DFI; Jason Bloom, Washington Association of Mortgage Professionals.

OTHER: Mike Ryherd, Northwest Housing; Joan Brown, Northwest Housing Association.