

HOUSE BILL REPORT

SSB 6083

As Passed House
March 1, 1994

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

Brief Description: Changing the mortgage broker practices act.

Sponsors: Senators Moore, Amondson, Prentice, Prince and Erwin; by request of Attorney General.

Brief History:

Reported by House Committee on:

Financial Institutions & Insurance, February 17, 1994,
DP;

Passed House, March 1, 1994, 97-0.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 12 members: Representatives Zellinsky, Chair; Scott, Vice Chair; Mielke, Ranking Minority Member; Anderson; Dellwo; R. Johnson; Kessler; Kremen; R. Meyers; Schmidt; Tate and L. Thomas.

Staff: Charlie Gavigan (786-7340).

Background: In 1993 the Legislature established a temporary Mortgage Broker Licensing Program. Effective December 1, 1993, all mortgage brokers operating in Washington must possess a license issued by the Department of Financial Institutions (DFI). In order to become licensed, a mortgage broker must have two years of experience in the residential mortgage loan industry, must complete an application form, must pay a licensure fee, and must file and maintain a surety bond or approved alternative in the amount of \$40,000 with DFI.

Certain entities and persons are exempt from the mortgage brokers licensing requirements, including: (1) attorneys not engaged in the mortgage broker business; (2) commercial banks; (3) bank holding companies; (4) savings banks; (5) trust companies; (6) savings and loan associations; (7) credit unions; (8) consumer loan companies; (9) insurance companies; (10) mortgage brokers approved and subject to auditing by the Federal National Mortgage Association, the

Government National Mortgage Association, the Federal Home Loan Mortgage Corporation and the U.S. Secretary of Housing and Urban Development (HUD); and (11) real estate brokers providing information in connection with a computer loan origination (CLO) system.

The 1993 act established a number of unlawful practices that mortgage brokers, employees of mortgage brokers, and mortgage bankers must not violate. A mortgage broker is liable for violations of the act by his or her loan originators.

All moneys collected through license fees and fines are deposited into the mortgage brokers licensing account. This dedicated account is subject to appropriation.

A five-member Mortgage Brokerage Commission was established to advise DFI on issues concerning the industry and to prepare a report containing recommendations for legislation to establish a permanent mortgage brokers licensing program. The report by this commission was submitted to the Legislature in December.

The temporary licensing program expires on October 31, 1994.

Summary of Bill: The temporary licensing program for mortgage brokers is made permanent within the Department of Financial Institutions (DFI).

Some persons who are exempt from the mortgage brokers licensing requirements, including most mortgage bankers who are not otherwise regulated, are required to comply with the prohibited practices sections of the act. In addition, they are subject to the director of Financial Institution's authority to issue cease and desist orders for violations of these prohibited practices and to obtain and review documents relevant to alleged violations of these practices. The list of prohibited practices is expanded to include: (1) failing to pay third party providers within an established time period except under certain circumstances; (2) attempting to charge or collect a prohibited fee; and (3) acting as a mortgage broker and real estate broker or agent on the same transaction, except when the broker provides a written disclosure and keeps the mortgage broker and real estate broker businesses separate.

The exemption for entities approved by the U.S. Secretary of HUD is deleted, effective June 1, 1994.

The bonding requirement is changed from a flat amount of \$40,000 to an amount ranging from \$20,000 to \$60,000. The director may establish a uniform bond amount for all

licensees or a range of bond amounts which varies according to the number of loan originators or independent contractors employed by the licensee.

Applicants seeking licensure are required to pay an application fee instead of a licensing fee. Application fees must be deposited in the banking examination fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the fees must be deposited in this account. The conditions for denial or approval of an application for a mortgage brokers license are modified. Applicants who do not have two years of experience in the residential mortgage loan industry may obtain a license by completing specific educational requirements and passing a written examination established by the director. All applicants are required to pass a written exam.

Licensees and every branch manager of a licensee must complete annual continuing education requirements, established by the director. Licensees must maintain an office within 30 miles of the state. Brokers who do not have an office in Washington must maintain a registered agent for service of any lawful process. Licensees and exempt individuals must provide additional disclosures and follow specific procedures for providing disclosures related to lock-in agreements. In addition, they must keep additional records and books related to advertisements which mention rates or fees and borrowers files.

Clarification is provided regarding which computer loan origination (CLO) services may be provided by a real estate broker without requiring a mortgage broker license and which activities would require a broker to obtain a mortgage broker license.

Independent contractors may work for a licensed mortgage broker without obtaining a separate license and bond but only if the licensed broker and his or her bonding agency are willing to assume responsibility for the independent contractor's violations.

The director may impose penalties for violations of the cease and desist orders or other orders of the director or remove or bar from the industry any principal, employee or loan originator of a licensee. The director may examine the books and records of a licensee within the first two years after issuance of a permanent license regardless of whether a complaint has been received and thereafter upon complaint. DFI is required to conduct an annual review of the number of complaints arising from residential mortgage lending in the

state and provide a report, with recommendations, to the appropriate legislative committees by December 1, 1996.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 5, which takes effect June 1, 1994.

Testimony For: This bill completes the process begun in 1993 to better address problems that have been occurring in the mortgage broker industry. It addresses many of the concerns raised last year, primarily through the work of the Mortgage Brokerage Commission and its efforts to include everyone in making the temporary licensing program permanent. This bill will better protect consumers and improve the industry.

Testimony Against: None.

Witnesses: Ken Lindberg, Washington Mortgage Brokerage Commission (supports); Dave Horn, Attorney General's Office (supports); Jim Fitzgerald, Washington Association of Mortgage Brokers (supports); and Jim Irish, Appraisal Institute (supports).