

SENATE BILL REPORT

SSB 5829

AS PASSED SENATE, MARCH 15, 1993

Brief Description: Licensing mortgage brokers and loan originators.

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

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5829 be substituted therefor, and the substitute bill do pass.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Amondson, Cantu, Fraser, Newhouse, Sutherland, and Vognild.

Staff: Benson Porter (786-7470)

Hearing Dates: March 1, 1993; March 2, 1993

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

HOUSE COMMITTEE ON APPROPRIATIONS

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 of made).

Interest has been expressed in establishing a licensure program for mortgage brokers along with applying some of the provisions of the act to mortgage bankers.

SUMMARY:

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 required to be licensed, certain employees of mortgage brokers, and mortgage bankers must comply with delineated unlawful practices. 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.

Appropriation: none

Revenue: yes

Fiscal Note: requested

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

TESTIMONY FOR:

The licensure of mortgage brokers will provide additional protection to Washington consumers. The current mortgage brokers practices act is inadequate, and the ongoing review required by the bill will facilitate the process of permanently enacting the proper enhancements to the current regulations.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Christine Gregoire, Attorney General; Scot D. Nelson, Advocates, Inc.; Kenneth R. Lindberg and Donald M. Barton, Washington Association of Mortgage Brokers

HOUSE AMENDMENT(S):

A real estate broker providing information in connection with a computer loan origination system for a fee is exempt from the mortgage broker licensing requirements. However, the broker must comply with any rules adopted by the Department of Licensing and with the prohibited practices section of the act.