

# HOUSE BILL REPORT

## HB 2734

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**As Reported by House Committee On:**  
Financial Institutions & Insurance

**Title:** An act relating to the mortgage broker practices act.

**Brief Description:** Addressing mortgage brokers.

**Sponsors:** Representatives Schual-Berke, Benson and Roach; by request of Department of Financial Institutions.

**Brief History:**

**Committee Activity:**

Financial Institutions & Insurance: 1/30/04, 2/4/04 [DPS].

### Brief Summary of Substitute Bill

Updates the Mortgage Broker Practices Act (Act) in the following manner:

- Provides that mortgage broker licenses are annual licenses;
- Clarifies the directors authority with respect to licensing actions and sanctions for violation of the Act;
- Clarifies the basis upon which the director may investigate a licensee; and
- Makes various technical corrections and clarifications.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Schual-Berke, Chair; Simpson, G., Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Roach, Santos and Simpson, D.

**Staff:** Carrie Tellefson (786-7127).

**Background:**

The Department of Financial Institutions (DFI) regulates financial institutions, including commercial banks, trust companies, savings banks, savings and loan associations, consumer loan companies, mortgage brokers, payday lenders, state-chartered credit unions, and

securities investments. It protects consumer's interests through its licensing, examination, compliance, supervisory responsibilities, and enforcement actions. It also handles consumer complaints, conducts investigations, and takes appropriate action to combat fraud.

The Act establishes a state system to regulate and license mortgage brokers. The Act requires licensing of each mortgage office doing business in Washington, regardless of their physical location. The Act protects consumers by requiring that mortgage brokers fully disclose the terms of loans, ensuring that mortgage brokers place in trust fees taken for third party service providers (such as appraisers) and by prohibiting mortgage brokers from engaging in unfair and deceptive acts and practices.

Mortgage broker licenses currently do not expire, although the DFI collects an annual license fee. When a mortgage broker fails to pay the annual fee, the DFI must take administrative action to revoke the license.

The DFI director may impose sanctions for violations of various provisions of the Act. The director's authority is specifically enumerated, setting forth the sanctions, such as denial, suspension, or revocation of a license, and the specific violations that correspond to each sanction. The director is authorized to investigate and examine mortgage brokers for the purposes of investigating complaints.

Certain entities are exempt from the provisions of the Act, such as banks, savings banks, trust companies, credit unions, savings and loan associations, insurance companies, and real estate investment trusts. Although they are exempt, they may not participate in unfair, deceptive, or fraudulent acts.

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### **Summary of Substitute Bill:**

Federally insured banks doing business under the laws of another state are exempt from the provisions of this chapter. In addition, entities that are exempt from the Act (banks, etc.) must comply with certain requirements of this Act, including the following:

- providing written disclosures of fees and costs;
- requiring the contract between the mortgage broker and borrower to be in writing;
- requiring the entity to keep third party payments (e.g. appraisers) in trust accounts;
- requiring the use of generally accepted accounting principles and keeping accurate and current books; and
- restrictions on fees and commissions.

The list of prohibited practices (acts that are unfair, deceptive, or fraudulent) is broadened beyond just the acts that occur in connection with a mortgage loan. A mortgage broker may not participate in any of these acts under any circumstances.

A designated mortgage broker must supervise the activities of licensed mortgage brokers. In addition, mortgage broker licenses expire annually and the director is required to create rules for license renewals. When an applicant is applying for a mortgage license, the applicant's

principals and designated mortgage broker are also subject to the same licensing requirements as the applicant.

The director is broadly authorized to impose fines, order restitution, and suspend, deny, or revoke licenses for any violation of the Act. Additionally, the director is authorized to examine and investigate a mortgage broker for "apparent" violations of the Act, in addition to investigating "complaints." Apparent violations include those that are obvious, evident, open to view, visible to the eye, within site or view, plain, or known. The director may investigate apparent violations during regular business hours at the mortgage broker's place of business and may view books, accounts, records, as well as interview employees or independent contractors. The director may also issue subpoenas.

"Knowing" violations of the Act amount to a class B felony punishable by confinement of 10 years or a fine of not more than \$20,000 or both.

The substitute bill also clarifies that escrow costs have to be the same on the good faith estimate and on the final settlement statement and clarifies that the DFI can take enforcement action against unlicensed entities that are subject to the act in addition to licensed entities. The actions of simply withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information, is not permitted. The bill clarifies that a person who knowingly commits or causes to be committed, a prohibited act is guilty of a class B felony and makes minor technical changes.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill clarifies that escrow costs have to be the same on the good faith estimate and on the final settlement statement and clarifies that the DFI can take enforcement action against unlicensed entities that are subject to the Act in addition to licensed entities. The actions of simply withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information, is not permitted, rather than "knowingly" doing these things. The bill clarifies that a person who knowingly commits or causes to be committed, a prohibited act is guilty of a class B felony and makes minor technical changes.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Currently mortgage broker licenses do not expire. Without an annual expiration date, the DFI has to take administrative action to revoke a license when a licensee fails to pay. This bill saves everyone time and money.

It also allows the DFI to investigate a complaint as well as apparent violations. There is no fiscal impact. They worked with the industry on this bill. It allows the director to take enforcement action for bad acts, which can include predatory lending, etc.

Currently, the director is only allowed to take action following a consumer complaint. This bill gives the director more options to follow up when a consumer complaint is not the source.

Other than consumer complaints, they get information about possible violations from examinations, competitor complaints, etc.

Mortgage brokers worked together with the DFI to pass the Mortgage Fraud and Prosecution Fund bill last year. This bill is a follow up to last year's bill. This fixes some of the technical loopholes that allow some people to slip through the cracks. It allows the DFI to take action for apparent violations. It also makes destruction of records a class B felony. The industry supports this bill.

**Testimony Against:** None.

**Persons Testifying:** (In support) Jim H. Brown, Washington Association of Mortgage Bankers; and Chuck Cross, Department of Financial Institutions.

**Persons Signed In To Testify But Not Testifying:** None.