

SENATE BILL REPORT

EHB 2340

As Reported By Senate Committee On:
Financial Institutions, Housing & Consumer Protection, February 21, 2006

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

Brief Description: Regulating mortgage brokers and loan originators.

Sponsors: Representatives Kirby, Roach, Chase, Kenney and Simpson; by request of Department of Financial Institutions.

Brief History: Passed House: 2/11/06, 89-6.

Committee Activity: Financial Institutions, Housing & Consumer Protection: 2/21/06 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Berkey, Vice Chair; Benton, Ranking Minority Member; Benson, Brandland, Finkbeiner, Franklin, Keiser, Schmidt and Spanel.

Staff: Jennifer Arnold (786-7471)

Background: Licensure of Mortgage Brokers. Mortgage brokers making loans in Washington must be licensed by the Department of Financial Institutions (DFI). Mortgage brokers are required to pay an annual fee to maintain licensure. Further, the designated brokers of every licensee must complete continuing education requirements.

Loan Originators. Loan originators are employed by, or are the representatives of, a person required to have a mortgage broker license in the performance of specific activities relating to a residential mortgage loan. Loan originators are not licensed.

Compliance Examinations. The DFI only has examination authority over a mortgage broker's business once in the first two years of being licensed. However, there is currently no funding mechanism for these examinations and, therefore, no functioning program has been established.

Investigations. The DFI may, as often as necessary, investigate complaints against a licensee or any other person in the business of mortgage brokering. The DFI may require the production of relevant materials and subpoena witnesses.

Mortgage Broker Commission. The Commission advises the DFI on the characteristics and needs of the mortgage brokerage profession. The Commission consists of five members appointed by the DFI. At least three members must be mortgage brokers.

Summary of Bill: Licensure of Mortgage Brokers and Loan Originators. Loan originators are required to be licensed and pay the associated fee, and, as part of the application process, must also provide the applicant information listed below:

Applicant Information - In addition to existing requirements, Mortgage Brokers must also provide their fingerprints, personal history, and business records. The DFI must submit the applicant information for a state and federal criminal history background check. Rules for incomplete applications will be determined by the DFI;

License expiration and renewal - Mortgage broker licenses expire annually. Loan originator licenses expire and must be renewed. The DFI will adopt rules for licensure renewal, including loan originator continuing education requirements;

Prohibited Practices - Failure to comply with specific federal laws is added to the prohibited practices of mortgage brokers. Loan originators are subject to the same prohibited practices as mortgage brokers. Loan originators may not accept any compensation from a borrower for the preparation, negotiation, and brokering of a loan. Loan originators may only take applications on behalf of one mortgage broker at a time. The mortgage broker must be clearly identified on the application.

Loan Originator Defined. The definition of a loan originator is changed to include anyone who does or is held out as able to: (1) take a residential mortgage application from a broker or (2) offer or negotiate the terms of a mortgage loan for direct, indirect, or the expectation of compensation. "Administrative and clerical" duties, for the purposes of defining a loan originator, are clarified.

Contracts between borrowers and loan originators. Contracts entered into by a loan originator are binding on the mortgage broker. Such contracts must be in writing, and contain the entire agreement.

Sanctions. The DFI has the authority to enforce all laws and rules relating to the licensing of mortgage brokers and loan originators. New criminal penalties are created for the intentional withholding or destruction of examination or investigation records, which is made a Class B felony and/or subject to a fine of up to \$20,000.

Compliance Examinations and Investigations. In place of once in the first two years, the DFI can only examine a mortgage broker's business once in the first five years of being licensed, including the licensing of a branch. The examination's scope is limited to compliance with the laws relating to mortgage brokers. The scope may be expanded upon clear identification of a need to do so. The DFI's reports must include a process for clear notification of violations to the licensee and an opportunity for the licensee to respond. The DFI's authority to conduct investigations and the scope thereof is clarified.

It is clarified that the DFI can only use loan originator licensing fees for the retention of professionals and specialists to conduct or assist in conducting examinations, not investigations.

Mortgage Broker Commission. The Commission is expanded from five to seven members, and a requirement that at least two of the members must be loan originators is added.

Annual Reports by Licensees. Licensees must provide the DFI annually with a report of mortgage broker activity. Only the total number of closed loans and total dollar volume of closed loans originated by the broker in Washington can be included in the report. Trade secret information is exempt from public disclosure requirements, unless aggregated in such a manner so that any individual broker's information is not identifiable.

DFI's Authority to Implement Licensing Program. The DFI has the authority to make any necessary preparations, in advance of the licensing program's effective date, to ensure that the program is operational by January 1, 2007.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is a very positive bill; everyone involved agrees that it is good legislation. This bill is identical to the version passed by the Senate.

Testimony Against: None.

Who Testified: PRO: Chuck Cross, The Department of Financial Institutions; Steve Buckner, Washington Association of Mortgage Brokers.