

SENATE BILL REPORT

ESSB 6166

As Passed Senate, February 9, 2006

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

Brief Description: Regulating mortgage brokers and loan originators.

Sponsors: Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Fairley, Benton, Prentice, Keiser, Franklin, Berkey, Brandland and Benson; by request of Department of Financial Institutions).

Brief History:

Committee Activity: Financial Institutions, Housing & Consumer Protection: 1/18/06, 1/25/06[DPS].

Passed Senate: 2/9/06, 42-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6166 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Berkey, Vice Chair; Benton, Ranking Minority Member; Benson, Brandland, 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/retained 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 the business of a mortgage broker once in the first two years of operation as a licensee. However, there is currently no funding mechanism for these examinations and, therefore, no functioning program has been established to date.

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 currently required information, Mortgage Brokers must also provide their fingerprints, personal history, business records, and other information required by the DFI. The DFI must submit the applicant information for a state and federal criminal history background check. Nonconviction information may be collected, but only disseminated to criminal justice agencies. Rules for incomplete applications will be determined by the DFI.

License expiration and renewal - Mortgage broker licenses expire annually. The DFI must adopt rules for license renewal. Loan originator licenses expire and must be renewed. The requirements for renewal, including continuing education, will be determined by the DFI by rule.

Prohibited Practices - Failure to comply with specific federal laws is added to 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 for "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, must be in writing, and must 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 may only examine the business of a mortgage broker 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 must create rules regarding examination protocols. DFI 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: The bill takes effect on January 1, 2007.

Testimony For: A panel of interested stakeholders met ten times from May through December of this year to discuss and finalize the bill language. A full spectrum of real estate participants were involved and the bill has received the support of the bulk of the mortgage and appraiser industry. In regards to clock hours and continuing education, DFI needs to be able to have the flexibility of rules to appropriately address such concerns. This bill is particularly valuable in that it expands and clarifies DFI's exam and investigation, providing the consumer with a tremendous benefit by virtue of deterring bad actors. This is legislation brought forward by the industry that gets to the root of the problem and helps consumers. The fact is that something as important as home loans should require a background check and education in order to weed out bad seeds. Further, it is imperative that the bar is raised on this business in order to ensure that knowledgeable, professionally ethical, persons are handling these loans.

Testimony Against: This bill should state the exact clock hours that a loan originator will be required to obtain to maintain a license, rather than leaving it to be determined by rule. The requirements for continuing education also need to be specified, and not left to rule. In general, there needs to be stronger loan originator laws in statute, rather than rule. "Supervisory authority" needs to be clarified.

Who Testified: PRO: Chuck Cross, Department of Financial Institutions; Bob Mitchell, Washington Realtors; Adam Stein, Washington Association of Mortgage Brokers; Jim Irish, Appraisers' Coalition of Washington, Seattle Chapter of the Appraisal Institute; Steve Bozick, Washington Association of Mortgage Brokers; Al Hashebacher, Washington Association of Mortgage Brokers; Richard Haser, American Home Appraisers.

CON: Jolin Lang, Industry attorney, Michelle Swanson, The National Association of Professional Mortgage Women.