SENATE BILL REPORT
SB 6728

As Passed Senate, February 6, 2008

Title: An act relating to homeownership security, responsible mortgage lending, and improving protections for residential mortgage loan consumers.

Brief Description: Enacting the governor's homeownership security task force recommendations regarding responsible mortgage lending and homeownership.

Sponsors: Senators Berkey, Kohl-Welles, Franklin, Regala and Keiser.

Brief History:
Committee Activity: Financial Institutions & Insurance:1/23/08, 1/29/08 [DP].
Passed Senate: 2/06/08, 48-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass.
Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Benton, Franklin, Parlette, Prentice and Schoesler.

Staff: Diane Smith (786-7410)

Background: The Governor created a task force to evaluate instability in the national subprime mortgage market and to make recommendations to minimize the impact of this national trend in Washington. One charge of the task force was to recommend reforms to Washington lending practices, as needed.

The final report of the Washington Task Force for Homeowner Security was issued on December 14, 2007. It makes 23 consensus recommendations in eight subject categories.

Those recommendations concerning reforms to Washington lending practices are incorporated into this bill.

Summary of Bill: The Department of Financial Institutions (DFI) has rule making authority to create a standard form of disclosure summary that financial institutions must use as a guide for a mandatory, single-page disclosure. This disclosure must be given to any person who consults with or retains a mortgage professional for information about a residential mortgage loan. The disclosure must contain all costs associated with the loan, including the yield spread premium stated as a dollar amount; fees and discount points; whether the loan contains prepayment penalties, a balloon payment, or a future adjustment to the interest rate (ARM); and other facts.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The objectives of federal guidelines on nontraditional mortgage product risks and the federal statement on subprime lending must be part of financial institutions' internal policies.

No prepayment penalties on residential mortgage loans may apply within 60 days before the initial reset period of an ARM.

Nontraditional and subprime mortgage products may not impose negative amortization.

Mortgage brokers and consumer loan companies are prohibited from steering customers to buy mortgage products that result in higher costs for the borrower than those for which the borrower's circumstances would otherwise make the borrower qualified.

Fraud, unfair or deceptive practices, and obtaining property by fraud or material misrepresentation by any person brokering or obtaining a residential mortgage loan are unlawful. Doing so knowingly is a crime, subjecting the perpetrator to confinement for ten years or a fine of 20,000 dollars, or both. For purposes of sentencing guidelines, mortgage fraud is a serious level III offense. Doing so is also defined as criminal profiteering for purposes of racketeering crimes.

The mortgage broker's duty of care to the public is defined as good faith, abstinence from deception, and the practice of honesty and equity in all matters related to the profession.

The notice of trustee's sale, required at least 30 days before the notice of sale of the property in a foreclosure proceeding is served, must include a prominent notice to the homeowner of his or her rights and options. This prominent notice applies only to property secured by a deed of trust that is an owner-occupied residential property.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO The meltdown of the subprime industry was a lesson for us all. This bill incorporates the Task Force's recommendations so that Washington can use lessons learned to improve the health of our mortgage industry. The Task Force was balanced, including advocates and the industry. All participants signed the report. Some of the 24 recommendations require legislation to implement, including the single page form document of key terms and conditions. It enables the prospective home-buyer to shop around for mortgage terms. Mortgage fraud is made a felony. The bill increases the severity with which mortgage fraud can be punished. It also focuses prosecution on the deceptive practices, rather than focusing on the property, as is now the case with mortgage fraud prosecutions. Because this crime is very sophisticated, it does not leave a ready-made trail of evidence. Having a statute of limitations of 5 years is appropriate. Making it a felony to destroy evidence is also astute because it is currently only a gross misdemeanor. The felony characterization is appropriate because the licensing of mortgage brokers and financial institutions require a higher standard for the retention of records. The level three winds up on one of the sentencing grid's axes with the potential for more stringent penalties and a heavier count when a felon's past crimes are considered in a current crime's consequences in court.

Prohibiting the use of the crime's proceeds to acquire real estate is appreciated because once acquired, real estate is then used for multiple other crimes. The impact on people is devastating. Civil liability for mortgage fraud is not amended by this bill. The current remedies in the consumer loan act and the mortgage broker act still apply. The comprehensive approach of this bill will help borrowers today and in the future. It does directly reflect what the Task Force intended and is technically sound. While interest groups may wish to go beyond the Task Force's recommendations, the use of separate legislation for that purpose is urged. Abuses have hurt thousands in Washington, especially those who are low and middle income, Latino, and other non-English-speakers. Amendments are offered to strengthen the impact of the legislation. The bill should require the use of sound lending practices, including verification of income and ability to repay, and requiring taxes and insurance to be in escrow. It should ban loan "flipping" which is refinancing property when the refinancing does not benefit the borrower. It should strengthen pre-payment penalty prohibitions. 60 days is not long enough to arrange new financing. It should increase the duty of mortgage brokers to be in the borrower's best interest. This was addressed in the Task Force's minority report. The legislation should move forward.

Persons Testifying: PRO: Kim Justice, Statewide Poverty Action Network; Deb Bortner, Department of Financial Institutions; David Seaver, King County Prosecutor; Denny Eliason, Washington Bankers Association; Arturo Gonzalez, el centro de la Raza Homeownership Center; Kari Burrell, Governor's Policy Office; and Pam Crone, Washington State Labor Council.