

HOUSE BILL REPORT

HB 2608

As Passed Legislature

Title: An act relating to licensing residential mortgage loan servicers through the national mortgage licensing service and clarifying the existing authority of the department of financial institutions to regulate residential mortgage loan modification services under the consumer loan act and mortgage broker practices act.

Brief Description: Concerning regulation and licensing of residential mortgage loan servicers and services.

Sponsors: Representatives Nelson, Kirby, Chase, Simpson, Morrell, Maxwell and Moeller; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/14/10, 1/19/10 [DP];
General Government Appropriations: 2/4/10, 2/5/10 [DP].

Floor Activity:

Passed House: 2/12/10, 77-20.
Passed Senate: 3/2/10, 40-6.
Passed Legislature.

Brief Summary of Bill

- Requires licensure of persons performing residential loan modifications.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Hurst, McCoy, Nelson, Rodne, Santos and Simpson.

Minority Report: Do not pass. Signed by 3 members: Representatives Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Roach.

Staff: Jon Hedegard (786-7127).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

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.

Majority Report: Do pass. Signed by 10 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives McCune, Ranking Minority Member; Klippert and Short.

Staff: Sara del Moral (786-7118).

Background:

In 2009 the Legislature passed bills significantly altering the licensing provisions for mortgage loan originator licensees under the Consumer Loan Act (CLA) and the Mortgage Brokers Practices Act (MBPA). The CLA and the MBPA both require the following from mortgage loan originator licensees:

- criminal history and credit background checks;
- pre-licensure education;
- pre-licensure testing;
- continuing education;
- financial responsibility requirements; and
- licensing mortgage loan originators through a Nationwide Mortgage Licensing System and Registry (NMLS&R).

The Department of Financial Institutions (DFI) has regulatory oversight of the CLA and the MBPA licensees. There are a host of required disclosures, reporting, record-keeping, and prohibited practices in the CLA and the MBPA. Noncompliance may lead to disciplinary, civil, or criminal actions.

There are additional statutory requirements for residential mortgage lending and disclosure requirements for residential mortgage loan servicing.

Summary of Bill:

Consumer Loan Act.

The definition of "mortgage loan originator" is altered to include persons who, for compensation, perform or hold themselves out as being able to perform residential loan modifications.

The following new definitions are added to the CLA:

- "residential mortgage loan modification;"
- "residential mortgage loan modification services;"
- "service or servicing a loan;"
- "service or servicing a reverse mortgage loan;" and
- "third-party residential loan modification services."

No person may service residential mortgage loans without being licensed or exempt from licensing under the CLA. Licensing includes fees, background checks, and financial responsibility requirements. An applicant or a principal of an applicant for a CLA license

may not have provided unlicensed residential mortgage loan modification services in the five years prior to the license application. The Director of the DFI (Director) may deny a license for revocation or suspension if a license related to lending, settlement services, or loan servicing was suspended by this state, another state, or the federal government within five years of the date of the application.

The Director may take actions, including disciplinary actions, against licensees that are residential mortgage loan servicers.

The Director may impose a different yearly assessment on a person servicing a residential mortgage loan than is imposed on other CLA licensees.

A residential mortgage loan servicer under the CLA must:

- file reports through the NMLS&R;
- comply with the provisions disclosure provisions required in mortgage loan servicing;
- clearly disclose fees within 45 days of the date the fee was incurred;
- credit payments in a timely fashion;
- promptly make escrow payments (if it has the authority to make those payments);
- provide certain information and make reasonable attempts to comply with borrower requests for other information;
- promptly correct errors and refund fees, where appropriate; and
- provide a written disclosure summary of all material terms before collecting any advance fees. The DFI must adopt a summary format and must adopt rules regarding a model fee agreement.

Third-party residential loan modifications service providers are limited to an advance fee of \$750 and may not charge total fees in excess of what is usual and customary or that are not unreasonable in light of the services provided.

Provisions related to mortgage fraud are expanded to include persons modifying a residential mortgage loan.

Mortgage Brokers Practices Act.

The definition of "loan originator" is altered to include persons who, for compensation, perform or hold themselves out as being able to perform residential loan modifications.

The following new definitions are added to the MBPA:

- "residential mortgage loan modification;"
- "residential mortgage loan modification services;" and
- "third-party residential loan modification services."

No person may service residential mortgage loans without being licensed or exempt from licensing under the MBPA. An applicant, a principal of an applicant, or a designated broker of an applicant for a MBPA license (as a mortgage broker or loan originator) may not have provided unlicensed residential mortgage loan modification services in the five years prior to the license application.

A residential mortgage loan servicer under the MBPA must:

- file reports through the NMLS&R;
- comply with the provisions disclosure provisions required in mortgage loan servicing;
- provide a written disclosure summary of all material terms before collecting any advance fees. The DFI must adopt a summary format and must adopt rules regarding a model fee agreement. The rules may include usual and customary fees for residential loan modification services;
- not charge an advance fee of \$750 and not charge total fees in excess of what is usual and customary or that are not unreasonable in light of the services provided;
- immediately inform the borrower in writing if additional information is needed or if it becomes apparent that a residential loan modification is not possible; and
- not require or encourage a borrower to: (1) waive legal rights or notices; (2) pay charges that are not in the written contract; or (3) cease communication with the lender, investor or loan servicer.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony (Financial Institutions & Insurance):

(In support) This bill brings clarity. It requires licensing for loan modifiers and services and includes all of the consumer protections that are in the current licensing statutes for mortgage loan originations. There have been many reports of people who are in trouble with their home loans who are approached by unlicensed loan modifiers. This closes a regulatory gap. Loan servicers must be licensed and loan modifiers must be licensed. Many servicers are licensed today because they also make loans. In the last 18 months, the DFI has received 100 complaints about services. If the servicer is not licensed in this state as a lender, the DFI can only forward the complaints to the Federal Trade Commission. The bill also clarifies the DFI's jurisdiction over loan modifiers. The bill was worked with stakeholders and is supported by the lending community.

(In support with amendment) This is a good bill. There is one small concern that was discovered late in the process. The bill uses one of three definitions of mortgage loan originator found in various statutes; this is not the definition preferred by realtors. It may be necessary to comply with federal law and if that is the case, realtors are fine with that outcome. The rest of the bill is fully supported.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) The Department of Financial Institutions (DFI) already licenses residential loan originators, it does not license loan modifiers. It is a problem for people facing foreclosure when they find that loan modifiers are difficult and inaccessible. The DFI wants control of that. Currently, the DFI has to forward complaints to the Federal Trade Commission, and the DFI would rather be able to help people. Also, there is the problem of scammers who pose

as third-party loan modifiers and prey upon consumers by promising to save people facing foreclosure from losing their homes.

(Opposed) None.

Persons Testifying (Financial Institutions & Insurance): (In support) Representative Nelson, prime sponsor; and Deb Bortner, Department of Financial Institutions.

(In support with amendment) Bob Mitchell, Washington Realtors.

Persons Testifying (General Government Appropriations): Deb Bertner, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying (Financial Institutions & Insurance): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations): None.