# SENATE BILL REPORT
# SB 5659

As of February 9, 2009

**Title**: An act relating to the consideration of mitigating factors for enforcement actions under the mortgage broker practices act.

**Brief Description**: Authorizing the consideration of mitigating factors for enforcement actions under the mortgage broker practices act.

**Sponsors**: Senators Berkey, Benton and Marr.

**Brief History:**
**Committee Activity**: Financial Institutions, Housing & Insurance: 2/04/09.

## SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Staff**: Diane Smith (786-7410)

**Background**: Loan originators and mortgage brokers assist people in obtaining or applying for mortgage loans on residential property. Mortgage brokers are paid by the mortgage client, the lender, or both, for their assistance. The loan originator is paid by the broker. The mortgage broker must have a written agreement with a lender before doing business. Contracts entered into by the loan originator are binding on the mortgage broker. They are both regulated by the Department of Financial Institutions (DFI). Loan originators were not licensed until 2007.

Mortgage brokers must satisfy a surety bonding requirement, as established by DFI, that can be from $20,000 to $60,000. There is no bonding required of loan originators.

A mortgage broker must at all times have a designated broker with responsibility for all activities conducted in the mortgage brokers's business. The designated broker who has supervisory authority over a mortgage broker is responsible for violations of the Mortgage Broker Practices Act committed by licensees, employees, or independent contractors, under certain circumstances.

One set of circumstances under which the designated broker, principal, or owner is responsible for the acts of others is when the designated broker, principal, or owner either instructs another to violate the act or knows of the violations committed by another and approves or allows these acts to be committed.

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The other set of circumstances under which the designated broker, principal, or owner is responsible for the acts of others is when the designated broker, principal, or owner with supervisory authority knows or should have known, by exercising reasonable care and inquiry, of violations that could have been avoided or mitigated but failed to take reasonable remedial action.

DFI may examine the business of mortgage brokers and loan originators to make certain that licensees are conducting business in compliance with the law. The costs for investigation may be charged to the licensee unless the investigation determines no violation occurred or unless the mortgage broker or loan originator provides a satisfactory remedy and DFI issues no order.

**Summary of Bill**: DFI must consider certain mitigating factors when it investigates a violation of the act or when it engages in an enforcement action. These factors number 16 and go to the possibility of mitigating the seriousness of the offense. DFI may adopt any other mitigating factors by rule.

When the licensee voluntarily discloses a violation that is the result of a deliberate and knowing violation by an employee or contract loan officer and the violation was intended to be concealed from the licensee, then DFI must comply with three requirements. First, DFI must exhaust all legal remedies against the violator; second, the licensee may not be charged punitive fees, penalties, or any investigation or other fees; and third, the licensee may not be audited, examined, or investigated.

DFI must adopt a policy to encourage licensees to report violations. When the licensee reports the violation, only in severe cases of high culpability may the reporting licensee's license be revoked or suspended or may the licensee be required to make restitution to a consumer.

**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: Mortgage professionals are in favor of this particular bill. They are working with the DFI to find common ground. The legislation protects consumers and gets people who should not be in the profession out of it.

CON: Mortgage brokers must have designated brokers who are responsible. Turning someone in can be a factor in the department's decisions. The department has seen to it that $500,000 was returned to harmed consumers We hope we can work out some version.

**Persons Testifying**: PRO: Jason Bloom, Washington Association of Mortgage Professionals.

CON: Deb Bortner, DFI.