

SENATE BILL REPORT

SB 6406

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 3, 2010

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: Senators Franklin, Benton, Hobbs, McDermott and Berkey; by request of Department of Financial Institutions.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/20/10, 2/02/10, 2/03/10 [DP, w/oRec].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Benton, Ranking Minority Member; Franklin and McDermott.

Minority Report: That it be referred without recommendation.

Signed by Senators Parlette and Schoesler.

Staff: Alison Mendiola (786-7483)

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

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- licensing mortgage loan originators through a Nationwide Mortgage Licensing System and Registry (NMLS&R).

The Department of Financial Institutions (DFI) has regulatory oversight of CLA and 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 (CLA). 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 request for other information
- promptly correct errors and refund fees, where appropriate;

- 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 modification 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 (MBPA). 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 NML&R;
- comply with the 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 may 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.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill clarifies that residential mortgage loan modification services are regulated by DFI. This bill adds licensing for third-party loan modifiers and services and includes all of the consumer protections that are in the current licensing statutes for mortgage loan originations, which closes a regulatory gap. Many servicers are already 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, many are out-of-state like in California, then DFI can only forward the complaints to the Federal Trade Commission. The bill also clarifies the DFI's jurisdiction over loan modifiers. The issue was worked with and supported by various stakeholders.

Persons Testifying: PRO: Deb Bortner, Department of Financial Institutions.