
SENATE BILL 5749

State of Washington

61st Legislature

2009 Regular Session

By Senators Berkey, Benton, and Shin

Read first time 01/30/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to regulating the business practices of mortgage
2 brokers for compliance with the secure and fair enforcement for
3 mortgage licensing act of 2008; amending RCW 19.146.010, 19.146.020,
4 19.146.0201, 19.146.205, 19.146.228, 19.146.235, 19.146.300, and
5 19.146.310; adding new sections to chapter 19.146 RCW; creating a new
6 section; and providing an effective date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 19.146.010 and 2008 c 78 s 3 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Affiliate" means any person who directly or indirectly through
13 one or more intermediaries, controls, or is controlled by, or is under
14 common control with another person.

15 (2) "Application" means the same as in Regulation X, Real Estate
16 Settlement Procedures, 24 C.F.R. Sec. 3500.

17 (3) "Borrower" means any person who consults with or retains a
18 mortgage broker or loan originator in an effort to obtain or seek

1 advice or information on obtaining or applying to obtain a residential
2 mortgage loan for himself, herself, or persons including himself or
3 herself, regardless of whether the person actually obtains such a loan.

4 (4) "Computer loan information systems" or "CLI system" means a
5 real estate mortgage financing information system that facilitates the
6 provision of information to consumers by a mortgage broker, loan
7 originator, lender, real estate agent, or other person regarding
8 interest rates and other loan terms available from different lenders.

9 (5) "Department" means the department of financial institutions.

10 (6) "Designated broker" means a natural person designated as the
11 person responsible for activities of the licensed mortgage broker in
12 conducting the business of a mortgage broker under this chapter and who
13 meets the experience and examination requirements set forth in RCW
14 19.146.210(1)(e).

15 (7) "Director" means the director of financial institutions.

16 (8) "Employee" means an individual who has an employment
17 relationship with a mortgage broker, and the individual is treated as
18 an employee by the mortgage broker for purposes of compliance with
19 federal income tax laws.

20 (9) "Federal banking agencies" means the board of governors of the
21 federal reserve system, comptroller of the currency, director of the
22 office of thrift supervision, national credit union administration, and
23 federal deposit insurance corporation.

24 (10) "Independent contractor" or "person who independently
25 contracts" means any person that expressly or impliedly contracts to
26 perform mortgage brokering services for another and that with respect
27 to its manner or means of performing the services is not subject to the
28 other's right of control, and that is not treated as an employee by the
29 other for purposes of compliance with federal income tax laws.

30 ~~((+10))~~ (11)(a) "Loan originator" means a natural person who
31 ~~((+a))~~ for direct or indirect compensation or gain, or in the
32 expectation of direct or indirect compensation or gain (i) takes a
33 residential mortgage loan application for a mortgage broker, or ~~((+b))~~
34 (ii) offers or negotiates terms of a mortgage loan~~(, for direct or~~
35 ~~indirect compensation or gain, or in the expectation of direct or~~
36 ~~indirect compensation or gain)).~~ "Loan originator" also includes a
37 person who holds themselves out to the public as able to perform any of
38 these activities. "Loan originator" does not mean persons performing

1 purely administrative or clerical tasks for a mortgage broker. For the
2 purposes of this subsection, "administrative or clerical tasks" means
3 the receipt, collection, and distribution of information common for the
4 processing of a loan in the mortgage industry and communication with a
5 borrower to obtain information necessary for the processing of a loan.
6 A person who holds himself or herself out to the public as able to
7 obtain a loan is not performing administrative or clerical tasks.

8 ~~((11))~~ (b) "Loan originator" does not include a person or entity
9 that only performs real estate brokerage activities and is licensed or
10 registered in accordance with applicable state law, unless the person
11 or entity is compensated by a lender, a mortgage broker, or other
12 mortgage loan originator or by any agent of such a lender, mortgage
13 broker, or other mortgage loan originator. For purposes of this
14 chapter, the term "real estate brokerage activity" means any activity
15 that involves offering or providing real estate brokerage services to
16 the public, including:

17 (i) Acting as a real estate agent or real estate broker for a
18 buyer, seller, lessor, or lessee of real property;

19 (ii) Bringing together parties interested in the sale, purchase,
20 lease, rental, or exchange of real property;

21 (iii) Negotiating, on behalf of any party, any portion of a
22 contract relating to the sale, purchase, lease, rental, or exchange of
23 real property, other than in connection with providing financing with
24 respect to such a transaction;

25 (iv) Engaging in any activity for which a person engaged in the
26 activity is required to be registered or licensed as a real estate
27 agent or real estate broker under any applicable law; and

28 (v) Offering to engage in any activity, or act in any capacity,
29 described in (b)(i) through (iv) of this subsection.

30 (c) "Loan originator" does not include a person or entity solely
31 involved in extensions of credit relating to timeshare plans, as that
32 term is defined in section 101(53D) of Title 11, United States Code.

33 (12) "Loan processor" means an individual who performs clerical or
34 support duties as an employee at the direction of and subject to the
35 supervision and instruction of a person licensed, or exempt from
36 licensing, under chapter 19.146 RCW.

37 (13) "Lock-in agreement" means an agreement with a borrower made by
38 a mortgage broker or loan originator, in which the mortgage broker or

1 loan originator agrees that, for a period of time, a specific interest
2 rate or other financing terms will be the rate or terms at which it
3 will make a loan available to that borrower.

4 ~~((+12+))~~ (14) "Mortgage broker" means any person who for
5 compensation or gain, or in the expectation of compensation or gain (a)
6 assists a person in obtaining or applying to obtain a residential
7 mortgage loan or (b) holds himself or herself out as being able to
8 assist a person in obtaining or applying to obtain a residential
9 mortgage loan.

10 ~~((+13+))~~ (15) "Nationwide mortgage licensing system and registry"
11 means a mortgage licensing system developed and maintained by the
12 conference of state bank supervisors and the American association of
13 residential mortgage regulators for the licensing and registration of
14 mortgage loan originators.

15 (16) "Person" means a natural person, corporation, company, limited
16 liability corporation, partnership, or association.

17 ~~((+14+))~~ (17) "Principal" means any person who controls, directly
18 or indirectly through one or more intermediaries, or alone or in
19 concert with others, a ten percent or greater interest in a
20 partnership, company, association, or corporation, and the owner of a
21 sole proprietorship.

22 ~~((+15+))~~ (18) "Residential mortgage loan" means any loan primarily
23 for personal, family, or household use secured by a mortgage or deed of
24 trust on residential real estate upon which is constructed or intended
25 to be constructed a single family dwelling or multiple family dwelling
26 of four or less units.

27 ~~((+16+))~~ (19) "S.A.F.E. act" means the secure and fair enforcement
28 for mortgage licensing act of 2008, or Title V of the housing and
29 economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July
30 30, 2008.

31 (20) "Third-party provider" means any person other than a mortgage
32 broker or lender who provides goods or services to the mortgage broker
33 in connection with the preparation of the borrower's loan and includes,
34 but is not limited to, credit reporting agencies, title companies,
35 appraisers, structural and pest inspectors, or escrow companies.

36 **Sec. 2.** RCW 19.146.020 and 2006 c 19 s 3 are each amended to read
37 as follows:

1 (1) (~~Except as provided under subsections (2) through (4) of this~~
2 ~~section,~~) The following are exempt from all provisions of this
3 chapter:

4 (a) ~~((i))~~ Any person doing business under the laws of the state of
5 Washington or the United States, and any federally insured depository
6 institution doing business under the laws of any other state, relating
7 to commercial banks, bank holding companies, savings banks, trust
8 companies, savings and loan associations, credit unions, insurance
9 companies, or real estate investment trusts as defined in 26 U.S.C.
10 Sec. 856 and the affiliates, subsidiaries, and service corporations
11 thereof ~~((; and~~

12 ~~((ii) Subject to the director's written approval, the exclusive~~
13 ~~agents of an affiliate of a bank that is wholly owned by the bank~~
14 ~~holding company that owns the bank));~~

15 (b) Any person doing business under the consumer loan act is exempt
16 from this chapter only for that business conducted under the authority
17 and coverage of the consumer loan act;

18 (c) An attorney licensed to practice law in this state who is not
19 principally engaged in the business of negotiating residential mortgage
20 loans when such attorney renders services in the course of his or her
21 practice as an attorney;

22 (d) Any person doing any act under order of any court, except for
23 a person subject to an injunction to comply with any provision of this
24 chapter or any order of the director issued under this chapter;

25 ~~((Any person making or acquiring a residential mortgage loan~~
26 ~~solely with his or her own funds for his or her own investment without~~
27 ~~intending to resell the residential mortgage loans;~~

28 ~~((f))~~ A real estate broker or salesperson licensed by the state who
29 obtains financing for a real estate transaction involving a bona fide
30 sale of real estate in the performance of his or her duties as a real
31 estate broker and who receives only the customary real estate broker's
32 or salesperson's commission in connection with the transaction;

33 ~~((g) Any mortgage broker approved and subject to auditing by the~~
34 ~~federal national mortgage association or the federal home loan mortgage~~
35 ~~corporation;~~

36 ~~((h))~~ (f) The United States of America, the state of Washington,
37 any other state, and any Washington city, county, or other political

1 subdivision, and any agency, division, or corporate instrumentality of
2 any of the entities in this subsection (1) ~~((h))~~ (f); and

3 ~~((i))~~ (g) A real estate broker who provides only information
4 regarding rates, terms, and lenders in connection with a CLI system,
5 who receives a fee for providing such information, who conforms to all
6 rules of the director with respect to the providing of such service,
7 and who discloses on a form approved by the director that to obtain a
8 loan the borrower must deal directly with a mortgage broker or lender.
9 However, a real estate broker shall not be exempt if he or she does any
10 of the following:

11 (i) Holds himself or herself out as able to obtain a loan from a
12 lender;

13 (ii) Accepts a loan application, or submits a loan application to
14 a lender;

15 (iii) Accepts any deposit for third-party services or any loan fees
16 from a borrower, whether such fees are paid before, upon, or after the
17 closing of the loan;

18 (iv) Negotiates rates or terms with a lender on behalf of a
19 borrower; or

20 (v) Provides the disclosure required by RCW 19.146.030(1).

21 (2) ~~((Those persons and their loan originators otherwise exempt
22 under subsection (1)(e), (g), or (4) of this section must comply with
23 RCW 19.146.0201 through 19.146.080. For violations of RCW 19.146.0201
24 through 19.146.080, the director has authority to issue a cease and
25 desist order as provided in RCW 19.146.220 and 19.146.227, to impose
26 penalties as provided in RCW 19.146.220, and to obtain and review books
27 and records that are relevant to any allegation of such a violation as
28 provided in RCW 19.146.235.~~

29 ~~(3))~~ Any person otherwise exempted from the licensing provisions
30 of this chapter may voluntarily submit an application to the director
31 for a mortgage broker's license. The director shall review such
32 application and may grant or deny licenses to such applicants upon the
33 same grounds and with the same fees as may be applicable to persons
34 required to be licensed under this chapter.

35 (a) Upon receipt of a license under this subsection, the licensee
36 is required to continue to maintain a valid license, is subject to all
37 provisions of this chapter, and has no further right to claim exemption

1 from the provisions of this chapter except as provided in (b) of this
2 subsection.

3 (b) Any licensee under this subsection who would otherwise be
4 exempted from the requirements of licensing by this section may apply
5 to the director for exemption from licensing. The director shall adopt
6 rules for reviewing such applications and shall grant exemptions from
7 licensing to applications which are consistent with those rules and
8 consistent with the other provisions of this chapter.

9 ~~((4) The director may exempt an exclusive agent under subsection
10 (1)(a) of this section provided that the affiliate in subsection (1)(a)
11 of this section:~~

12 ~~(a) Applies for and maintains a license as provided by subsection
13 (3) of this section;~~

14 ~~(b) Has on file with the director a binding written agreement under
15 which the affiliate assumes responsibility for the exclusive agent's
16 violations of this chapter or rules adopted under this chapter; and~~

17 ~~(c) Maintains a bond or other security in an amount required by the
18 director that runs to the benefit of the state and any person who
19 suffers loss by reason of the exclusive agent's violation of this
20 chapter or rules adopted under this chapter.))~~

21 **Sec. 3.** RCW 19.146.0201 and 2006 c 19 s 4 are each amended to read
22 as follows:

23 It is a violation of this chapter for a loan originator((~~7~~)) or
24 mortgage broker required to be licensed under this chapter((~~7~~ ~~or~~
25 ~~mortgage broker otherwise exempted from this chapter under RCW~~
26 ~~19.146.020(1)(e), (g), or (4))~~) to:

27 (1) Directly or indirectly employ any scheme, device, or artifice
28 to defraud or mislead borrowers or lenders or to defraud any person;

29 (2) Engage in any unfair or deceptive practice toward any person;

30 (3) Obtain property by fraud or misrepresentation;

31 (4) Solicit or enter into a contract with a borrower that provides
32 in substance that the mortgage broker may earn a fee or commission
33 through the mortgage broker's "best efforts" to obtain a loan even
34 though no loan is actually obtained for the borrower;

35 (5) Solicit, advertise, or enter into a contract for specific
36 interest rates, points, or other financing terms unless the terms are
37 actually available at the time of soliciting, advertising, or

1 contracting from a person exempt from licensing under RCW 19.146.020(1)
2 (~~(g) or (h)~~) (f) or a lender with whom the mortgage broker maintains
3 a written correspondent or loan broker agreement under RCW 19.146.040;

4 (6) Fail to make disclosures to loan applicants and
5 noninstitutional investors as required by RCW 19.146.030 and any other
6 applicable state or federal law;

7 (7) Make, in any manner, any false or deceptive statement or
8 representation with regard to the rates, points, or other financing
9 terms or conditions for a residential mortgage loan or engage in bait
10 and switch advertising;

11 (8) Negligently make any false statement or knowingly and willfully
12 make any omission of material fact in connection with any reports filed
13 by a mortgage broker or in connection with any investigation conducted
14 by the department;

15 (9) Make any payment, directly or indirectly, to any appraiser of
16 a property, for the purposes of influencing the independent judgment of
17 the appraiser with respect to the value of the property;

18 (10) Advertise any rate of interest without conspicuously
19 disclosing the annual percentage rate implied by such rate of interest;

20 (11) Fail to comply with any requirement of the truth-in-lending
21 act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the real
22 estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X,
23 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec.
24 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V,
25 Subtitle A of the financial modernization act of 1999 (known as the
26 "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade
27 commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the
28 Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C.
29 Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the
30 federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a);
31 the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs.
32 6101 to 6108; and the federal trade commission telephone sales rule, 16
33 C.F.R. Part 310, as these acts existed on January 1, 2007, or such
34 subsequent date as may be provided by the department by rule, in any
35 advertising of residential mortgage loans, or any other applicable
36 mortgage broker or loan originator activities covered by the acts. The
37 department may adopt by rule requirements that mortgage brokers and

1 loan originators comply with other applicable federal statutes and
2 regulations in any advertising of residential mortgage loans, or any
3 other mortgage broker or loan originator activity;

4 (12) Fail to pay third-party providers no later than thirty days
5 after the recording of the loan closing documents or ninety days after
6 completion of the third-party service, whichever comes first, unless
7 otherwise agreed or unless the third-party service provider has been
8 notified in writing that a bona fide dispute exists regarding the
9 performance or quality of the third-party service;

10 (13) Collect, charge, attempt to collect or charge or use or
11 propose any agreement purporting to collect or charge any fee
12 prohibited by RCW 19.146.030 or 19.146.070;

13 (14)(a) Except when complying with (b) and (c) of this subsection,
14 act as a loan originator in any transaction (i) in which the loan
15 originator acts or has acted as a real estate broker or salesperson or
16 (ii) in which another person doing business under the same licensed
17 real estate broker acts or has acted as a real estate broker or
18 salesperson;

19 (b) Prior to providing mortgage services to the borrower, a loan
20 originator, in addition to other disclosures required by this chapter
21 and other laws, shall provide to the borrower the following written
22 disclosure:

23 THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES
24 HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON
25 REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO
26 YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE
27 MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO
28 PURCHASE THE PROPERTY.

29 YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN
30 CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON
31 SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY
32 MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

33 (c) A real estate broker or salesperson licensed under chapter
34 18.85 RCW who also acts as a mortgage broker shall carry on such
35 mortgage broker business activities and shall maintain such person's
36 mortgage broker business records separate and apart from the real
37 estate broker activities conducted pursuant to chapter 18.85 RCW. Such

1 activities shall be deemed separate and apart even if they are
2 conducted at an office location with a common entrance and mailing
3 address, so long as each business is clearly identified by a sign
4 visible to the public, each business is physically separated within the
5 office facility, and no deception of the public as to the separate
6 identities of the broker business firms results. This subsection
7 (14)(c) shall not require a real estate broker or salesperson licensed
8 under chapter 18.85 RCW who also acts as a mortgage broker to maintain
9 a physical separation within the office facility for the conduct of its
10 real estate and mortgage broker activities where the director
11 determines that maintaining such physical separation would constitute
12 an undue financial hardship upon the mortgage broker and is unnecessary
13 for the protection of the public; or

14 (15) Fail to comply with any provision of RCW 19.146.030 through
15 19.146.080 or any rule adopted under those sections.

16 **Sec. 4.** RCW 19.146.205 and 2006 c 19 s 10 are each amended to read
17 as follows:

18 (1) Application for a mortgage broker license under this chapter
19 (~~shall~~) must be (~~in writing~~) made to the nationwide mortgage
20 licensing system and registry and in the form prescribed by the
21 director. The application shall contain at least the following
22 information:

23 (a) The name, address, date of birth, and social security number of
24 the applicant, and any other names, dates of birth, or social security
25 numbers previously used by the applicant, unless waived by the
26 director;

27 (b) If the applicant is a partnership or association, the name,
28 address, date of birth, and social security number of each general
29 partner or principal of the association, and any other names, dates of
30 birth, or social security numbers previously used by the members,
31 unless waived by the director;

32 (c) If the applicant is a corporation, the name, address, date of
33 birth, and social security number of each officer, director, registered
34 agent, and each principal stockholder, and any other names, dates of
35 birth, or social security numbers previously used by the officers,
36 directors, registered agents, and principal stockholders unless waived
37 by the director;

1 (d) The street address, county, and municipality where the
2 principal business office is to be located;

3 (e) The name, address, date of birth, and social security number of
4 the applicant's designated broker, and any other names, dates of birth,
5 or social security numbers previously used by the designated broker and
6 a complete set of the designated broker's fingerprints taken by an
7 authorized law enforcement officer; and

8 (f) Such other information regarding the applicant's or designated
9 broker's background, financial responsibility, experience, character,
10 and general fitness as the director may require by rule.

11 (2) As a part of or in connection with an application for any
12 license under this section, or periodically upon license renewal, the
13 applicant shall furnish information concerning his or her identity,
14 including fingerprints for submission to the Washington state patrol,
15 the federal bureau of investigation, and any governmental agency or
16 entity authorized to receive this information for a state and national
17 criminal history background check; personal history; experience;
18 business record; purposes; and other pertinent facts, as the director
19 may reasonably require. As part of or in connection with an
20 application for a license under this chapter, the director is
21 authorized to receive criminal history record information that includes
22 nonconviction data as defined in RCW 10.97.030. The department may
23 only disseminate nonconviction data obtained under this section to
24 criminal justice agencies. This section does not apply to financial
25 institutions regulated under chapters 31.12 and 31.13 RCW and Titles
26 30, 32, and 33 RCW.

27 (3) In order to reduce the points of contact which the federal
28 bureau of investigation may have to maintain, the director may use the
29 nationwide mortgage licensing system and registry as a channeling agent
30 for requesting information from and distributing information to the
31 department of justice or any governmental agency.

32 (4) In order to reduce the points of contact which the director may
33 have to maintain, the director may use the nationwide mortgage
34 licensing system and registry as a channeling agent for requesting and
35 distributing information to and from any source so directed by the
36 director.

37 (5) At the time of filing an application for a license under this
38 chapter, each applicant shall pay to the director through the

1 nationwide mortgage licensing system and registry the appropriate
2 application fee in an amount determined by rule of the director in
3 accordance with RCW 43.24.086 to cover, but not exceed, the cost of
4 processing and reviewing the application. The director shall deposit
5 the moneys in the financial services regulation fund, unless the
6 consumer services account is created as a dedicated, nonappropriated
7 account, in which case the director shall deposit the moneys in the
8 consumer services account.

9 ((4)(a)) (6) Each applicant for a mortgage broker's license shall
10 file and maintain a surety bond, in an amount ~~((of not greater than~~
11 ~~sixty thousand dollars nor less than twenty thousand dollars))~~ which
12 the director deems adequate to protect the public interest, executed by
13 the applicant as obligor and by a surety company authorized to do a
14 surety business in this state as surety. The bonding requirement as
15 established by the director ~~((may))~~ shall take the form of a ~~((uniform~~
16 ~~bond amount for all licensees or the director may establish by rule a~~
17 ~~schedule establishing a))~~ range of bond amounts which shall vary
18 according to the annual ~~((average number of loan originators of a))~~
19 loan origination volume of the licensee. The bond shall run to the
20 state of Washington as obligee, and shall run first to the benefit of
21 the borrower and then to the benefit of the state and any person or
22 persons who suffer loss by reason of the applicant's or its loan
23 originator's violation of any provision of this chapter or rules
24 adopted under this chapter. The bond shall be conditioned that the
25 obligor as licensee will faithfully conform to and abide by this
26 chapter and all rules adopted under this chapter, and shall reimburse
27 all persons who suffer loss by reason of a violation of this chapter or
28 rules adopted under this chapter. Borrowers shall be given priority
29 over the state and other persons. The state and other third parties
30 shall be allowed to receive distribution pursuant to a valid claim
31 against the remainder of the bond. In the case of claims made by any
32 person or entity who is not a borrower, no final judgment may be
33 entered prior to one hundred eighty days following the date the claim
34 is filed. The bond shall be continuous and may be canceled by the
35 surety upon the surety giving written notice to the director of its
36 intent to cancel the bond. The cancellation shall be effective thirty
37 days after the notice is received by the director. Whether or not the
38 bond is renewed, continued, reinstated, reissued, or otherwise

1 extended, replaced, or modified, including increases or decreases in
2 the penal sum, it shall be considered one continuous obligation, and
3 the surety upon the bond shall not be liable in an aggregate or
4 cumulative amount exceeding the penal sum set forth on the face of the
5 bond. In no event shall the penal sum, or any portion thereof, at two
6 or more points in time be added together in determining the surety's
7 liability. The bond shall not be liable for any penalties imposed on
8 the licensee, including, but not limited to, any increased damages or
9 attorneys' fees, or both, awarded under RCW 19.86.090. The applicant
10 may obtain the bond directly from the surety or through a group bonding
11 arrangement involving a professional organization comprised of mortgage
12 brokers if the arrangement provides at least as much coverage as is
13 required under this subsection.

14 ~~((b) Subsection (4)(b) and (c) of this section applies only to~~
15 ~~applications received on or before January 1, 2007. Before January 1,~~
16 ~~2007, in lieu of a surety bond, the applicant may, upon approval by the~~
17 ~~director, file with the director a certificate of deposit, an~~
18 ~~irrevocable letter of credit, or such other instrument as approved by~~
19 ~~the director by rule, drawn in favor of the director for an amount~~
20 ~~equal to the required bond.~~

21 ~~(c) Before January 1, 2007, in lieu of the surety bond or~~
22 ~~compliance with (b) of this subsection, an applicant may obtain~~
23 ~~insurance or coverage from an association comprised of mortgage brokers~~
24 ~~that is organized as a mutual corporation for the sole purpose of~~
25 ~~insuring or self-insuring claims that may arise from a violation of~~
26 ~~this chapter. An applicant may only substitute coverage under this~~
27 ~~subsection for the requirements of (a) or (b) of this subsection if the~~
28 ~~director, with the consent of the insurance commissioner, has~~
29 ~~authorized such association to organize a mutual corporation under such~~
30 ~~terms and conditions as may be imposed by the director to ensure that~~
31 ~~the corporation is operated in a financially responsible manner to pay~~
32 ~~any claims within the financial responsibility limits specified in (a)~~
33 ~~of this subsection.))~~

34 **Sec. 5.** RCW 19.146.228 and 2006 c 19 s 15 are each amended to read
35 as follows:

36 The director shall establish fees ~~((by rule in accordance with the~~

1 ~~policy established in RCW 43.24.086 and fees shall be~~) sufficient to
2 cover, but not exceed, the costs of administering this chapter. These
3 fees may include:

4 (1) An annual assessment paid by each licensee on or before a date
5 specified by rule;

6 (2) An investigation fee to cover the costs of any investigation of
7 the books and records of a licensee or other person subject to this
8 chapter; and

9 (3) An application fee to cover the costs of processing
10 applications made to the director under this chapter.

11 Mortgage brokers and loan originators shall not be charged
12 investigation fees for the processing of complaints when the
13 investigation determines that no violation of this chapter occurred or
14 when the mortgage broker or loan originator provides a remedy
15 satisfactory to the complainant and the director and no order of the
16 director is issued. All moneys, fees, and penalties collected under
17 the authority of this chapter shall be deposited into the financial
18 services regulation fund, unless the consumer services account is
19 created as a dedicated, nonappropriated account, in which case all
20 moneys, fees, and penalties collected under this chapter shall be
21 deposited in the consumer services account.

22 **Sec. 6.** RCW 19.146.235 and 2006 c 19 s 16 are each amended to read
23 as follows:

24 The director or a designee has authority to conduct investigations
25 and examinations as provided in this section.

26 (1) For the purposes of investigating violations or complaints
27 arising under this chapter, the director or his or her designee may
28 make an investigation of the operations of any mortgage broker or loan
29 originator as often as necessary in order to carry out the purposes of
30 this chapter.

31 (2) Every mortgage broker shall make available to the director or
32 a designee its books and records relating to its operations.

33 (a) For the purpose of examinations, the director or his or her
34 designee may have access to such books and records during normal
35 business hours and interview the officers, principals, loan
36 originators, employees, independent contractors, and agents of the
37 licensee concerning their business.

1 (b) For the purposes of investigating violations or complaints
2 arising under this chapter, the director may at any time, either
3 personally or by a designee, investigate the business, including but
4 not limited to the books, accounts, records, and files used therein, of
5 every licensee and of every person engaged in the business of mortgage
6 brokering, whether such a person acts or claims to act under, or
7 without the authority of, this chapter.

8 (c) The director or designated person may direct, subpoena, or
9 order the attendance of and examine under oath all persons whose
10 testimony may be required about the loans or the business or subject
11 matter of any such examination or investigation, and may direct,
12 subpoena, or order such person to produce books, accounts, records,
13 files, and any other documents the director or designated person deems
14 relevant to the inquiry.

15 ~~(3) ((Once during the first five years of licensing, including~~
16 ~~branch licensing,))~~ The director may visit, either personally or by
17 designee, the licensee's place or places of business to conduct an
18 examination. The scope of the examination is limited to documents and
19 information necessary to determine compliance with this chapter and
20 attendant rules. In general, the examination scope may include:

21 (a) A review for trust accounting compliance;

22 (b) Loan file review to determine the mortgage broker's compliance
23 with this chapter and applicable federal regulations covering the
24 business of mortgage brokering and lending;

25 (c) Interviews for the purpose of understanding business and
26 solicitation practices, transactional events, disclosure compliance,
27 complaint resolution, or determining specific compliance with this
28 chapter and the attendant rules; and

29 (d) A review of general business books and records, including
30 employee records, for the purpose of determining specific compliance
31 with this chapter and the attendant rules.

32 (4) The purpose of an examination is to make certain that licensees
33 are conducting business in compliance with the law. Therefore,
34 protocols for examination findings and corrective action directed from
35 an examination must be established by rule of the director. To
36 accomplish this purpose, these protocols must include the following:

37 (a) A reporting mechanism from the director to the licensee;

1 (b) A process for clear notification of violations and an
2 opportunity for response by the licensee; and

3 (c) The criteria by which the frequency of examinations will be
4 determined.

5 (5) If the examination findings clearly identify the need to expand
6 the scope of the examination, the director or a designee, upon five
7 days' written notification to the licensee with an explanation of the
8 need, may:

9 (a) Expand the examination review to locations other than the
10 examined location regardless of the number of years a location has held
11 a license; or

12 (b) Expand the time period of the examination beyond the five-year
13 period of licensing, provided the expansion of time does not exceed a
14 date certain identified in the written notification in this subsection.

15 (6) The director or a designee may consider reports made by
16 independent certified professionals for the mortgage broker covering
17 the same general subject matter as the examination. The director or a
18 designee may incorporate all or part of the report in the report of the
19 examination.

20 (7) The director may retain attorneys, accountants, or other
21 professionals and specialists as examiners, auditors, or investigators
22 to conduct or assist in the conduct of examinations or investigations.
23 The cost of these services for investigations only must be billed in
24 accordance with RCW 19.146.228.

25 (8) The director may establish by rule travel costs for examination
26 of out-of-state entities.

27 (9)(a) No person subject to examination or investigation under this
28 chapter may knowingly withhold, abstract, remove, mutilate, destroy, or
29 secrete any books, records, computer records, or other information.

30 (b) A person who commits an act under (a) of this subsection is
31 guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or
32 punishable by a fine of not more than twenty thousand dollars, or both.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.146 RCW
34 to read as follows:

35 (1) Each applicant shall complete at least twenty hours of
36 prelicensing education approved and administered by the nationwide
37 mortgage licensing system and registry. The prelicensing education

1 shall include at least three hours of federal law and regulations;
2 three hours of ethics, which shall include instruction on fraud,
3 consumer protection, and fair lending issues; two hours of training
4 related to lending standards for the nontraditional mortgage product
5 marketplace; and at least two hours of training specifically related to
6 Washington law.

7 (2) An applicant having successfully completed the prelicensing
8 education requirements approved and administered by the nationwide
9 mortgage licensing system and registry for any state shall be accepted
10 as credit towards completion of prelicensing education requirements in
11 this state.

12 (3) This chapter does not preclude any prelicensing education
13 course, as approved by the nationwide mortgage licensing system and
14 registry, that is provided by the employer of the applicant or an
15 entity which is affiliated with the applicant by an agency contract, or
16 any subsidiary or affiliate of such an employer or entity.
17 Prelicensing education may be offered either in a classroom, online, or
18 by any other means approved by the nationwide mortgage licensing system
19 and registry.

20 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.146 RCW
21 to read as follows:

22 (1) To obtain a license, an individual must pass a test developed
23 by the nationwide mortgage licensing system and registry and
24 administered by a test provider approved by the nationwide mortgage
25 licensing system and registry based upon reasonable standards.

26 (2) An individual is not considered to have passed a test unless
27 the individual achieves a test score of not less than seventy-five
28 percent correct answers to questions.

29 (a) An individual may retake a test three consecutive times with
30 each consecutive taking occurring at least thirty days after the
31 preceding test.

32 (b) After failing three consecutive tests, an individual must wait
33 at least six months before taking the test again.

34 (c) A licensed mortgage loan originator who fails to maintain a
35 valid license for a period of five years or longer must retake the
36 test, not taking into account any time during which that individual is
37 a registered mortgage loan originator.

1 (3) This section does not prohibit a test provider approved by the
2 nationwide mortgage licensing system and registry from providing a test
3 at the location of the employer of the applicant or any subsidiary or
4 affiliate of the employer of the applicant, or any entity with which
5 the applicant holds an exclusive arrangement to conduct the business of
6 a mortgage loan originator.

7 **Sec. 9.** RCW 19.146.300 and 2006 c 19 s 19 are each amended to read
8 as follows:

9 (1) Application for a loan originator license under this chapter
10 (~~shall~~) must be (~~in writing~~) made to the nationwide mortgage
11 licensing system and registry and in the form prescribed by the
12 director. The application shall contain at least the following
13 information:

14 (a) The name, address, date of birth, and social security number of
15 the loan originator applicant, and any other names, dates of birth, or
16 social security numbers previously used by the loan originator
17 applicant, unless waived by the director; and

18 (b) Such other information regarding the loan originator
19 applicant's background, experience, character, and general fitness as
20 the director may require by rule.

21 (2)(a) As part of or in connection with an application for any
22 license under this section, or periodically upon license renewal, the
23 loan originator applicant shall furnish information concerning his or
24 her identity, including fingerprints for submission to the Washington
25 state patrol, the federal bureau of investigation, the nationwide
26 mortgage licensing system and registry, and any governmental agency or
27 entity authorized to receive this information for a state and national
28 criminal history background check; personal history; experience;
29 business record; purposes; and other pertinent facts, as the director
30 may reasonably require. As part of or in connection with an
31 application for a license under this chapter, or periodically upon
32 license renewal, the director is authorized to receive criminal history
33 record information that includes nonconviction data as defined in RCW
34 10.97.030. The department may only disseminate nonconviction data
35 obtained under this section to criminal justice agencies. This section
36 does not apply to financial institutions regulated under chapters 31.12
37 and 31.13 RCW and Titles 30, 32, and 33 RCW.

1 (b) In order to reduce the points of contact which the federal
2 bureau of investigation may have to maintain, the director may use the
3 nationwide mortgage licensing system and registry as a channeling agent
4 for requesting information from and distributing information to the
5 department of justice or any governmental agency.

6 (c) In order to reduce the points of contact which the director may
7 have to maintain, the director may use the nationwide mortgage
8 licensing system and registry as a channeling agent for requesting and
9 distributing information to and from any source so directed by the
10 director.

11 (d) As part of or in connection with an application for a license
12 under this section, the loan originator applicant must furnish to the
13 nationwide mortgage licensing system and registry personal history and
14 experience in a form prescribed by the nationwide mortgage licensing
15 system and registry, including the submission of authorization for the
16 nationwide mortgage licensing system and registry and the director to
17 obtain:

18 (i) An independent credit report obtained from a consumer reporting
19 agency described in section 603(p) of the federal fair credit reporting
20 act; and

21 (ii) Information related to any administrative, civil, or criminal
22 findings by any governmental jurisdiction.

23 (3) At the time of filing an application for a license under this
24 chapter, each loan originator applicant shall pay to the director the
25 appropriate application fee in an amount determined by rule of the
26 director in accordance with RCW 19.146.228 to cover the cost of
27 processing and reviewing the application. The director shall deposit
28 the moneys in the financial services regulation fund.

29 (4) The director must establish by rule procedures for accepting
30 and processing incomplete applications.

31 NEW SECTION. Sec. 10. A new section is added to chapter 19.146
32 RCW to read as follows:

33 Registered mortgage loan originators working for depository
34 institutions are exempt from this chapter.

35 **Sec. 11.** RCW 19.146.310 and 2006 c 19 s 20 are each amended to
36 read as follows:

1 (1) The director shall issue and deliver a loan originator license
2 if, after investigation, the director makes the following findings:

3 (a) The loan originator applicant has paid the required license
4 fees;

5 (b) The loan originator applicant has met the requirements of RCW
6 19.146.300;

7 (c) The loan originator applicant has ~~((not))~~ never had a license
8 issued under this chapter or any similar state statute ~~((suspended or))~~
9 ~~((within five years of the filing of the present application))~~
10 except that, for the purposes of this subsection, a subsequent formal
11 vacation of a revocation is not a revocation;

12 (d)(i) The loan originator applicant has not been convicted of a
13 gross misdemeanor involving dishonesty or financial misconduct or ~~((a~~
14 ~~felony))~~ has not been convicted of, or pled guilty or nolo contendere
15 to, a felony in a domestic, foreign, or military court within seven
16 years of the filing of the present application; and

17 (ii) The loan originator applicant has not been convicted of, or
18 pled guilty or nolo contendere to, a felony in a domestic, foreign, or
19 military court at any time preceding the date of application if the
20 felony involved an act of fraud, dishonesty, breach of trust, or money
21 laundering;

22 (e) The loan originator applicant has passed a written examination
23 whose content shall be established by rule of the director;

24 (f) The loan originator applicant has not been found to be in
25 violation of this chapter or rules;

26 (g) The loan originator applicant has demonstrated financial
27 responsibility, character, and general fitness such as to command the
28 confidence of the community and to warrant a belief that the business
29 will be operated honestly and fairly within the purposes of this
30 chapter. For the purposes of this section, an applicant has not
31 demonstrated financial responsibility when the applicant shows
32 disregard in the management of his or her financial condition. A
33 determination that an individual has shown disregard in the management
34 of his or her financial condition may include, but is not limited to,
35 an assessment of: Current outstanding judgments, except judgments
36 solely as a result of medical expenses; current outstanding tax liens
37 or other government liens and filings; foreclosures within the last

1 three years; or a pattern of seriously delinquent accounts within the
2 past three years; and

3 (h) The loan originator licensee has completed, during the calendar
4 year preceding a licensee's annual license renewal date, a minimum of
5 eight hours of continuing education as established by rule of the
6 director. (~~The director shall establish standards in rule for~~
7 ~~approval of professional organizations offering continuing education to~~
8 ~~loan originators. The director may approve continuing education taken~~
9 ~~by loan originators in other states if the director is satisfied that~~
10 ~~such continuing education meets the requirements of the continuing~~
11 ~~education required by this chapter.~~)

12 (2) If the director does not find the conditions of subsection (1)
13 of this section have been met, the director shall not issue the loan
14 originator license. The director shall notify the loan originator
15 applicant of the denial and return to the loan originator applicant any
16 remaining portion of the license fee that exceeds the department's
17 actual cost to investigate the license.

18 (3) The director shall issue a new loan originator license under
19 this chapter to any licensee that has a valid license and is otherwise
20 in compliance with this chapter.

21 (4) A loan originator license issued under this section expires on
22 the date one year from the date of issuance which, for license renewal
23 purposes, is also the renewal date. The director shall establish rules
24 regarding the loan originator license renewal process created under
25 this chapter.

26 (5) A loan originator licensee may surrender a license by
27 delivering to the director written notice of surrender, but the
28 surrender does not affect the loan originator licensee's civil or
29 criminal liability or any administrative actions arising from acts or
30 omissions occurring before such surrender.

31 (6) To prevent undue delay in the issuance of a loan originator
32 license and to facilitate the business of a loan originator, an interim
33 loan originator license with a fixed date of expiration may be issued
34 when the director determines that the loan originator has substantially
35 fulfilled the requirements for loan originator licensing as defined by
36 rule.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.146
2 RCW to read as follows:

3 (1) A licensed mortgage loan originator must complete a minimum of
4 eight hours of continuing education, eight of which is approved and
5 administered by the nationwide mortgage licensing system and registry
6 which must include at least three hours of federal law and regulations;
7 two hours of ethics, which must include instruction on fraud, consumer
8 protection, and fair lending issues; and two hours of training related
9 to lending standards for the nontraditional mortgage product
10 marketplace. Additionally, the director may require at least one hour
11 of continuing education on Washington law provided by and administered
12 through an approved provider.

13 (2) The nationwide mortgage licensing system and registry must
14 review and approve continuing education courses. Review and approval
15 of a continuing education course must include review and approval of
16 the course provider.

17 (3) A licensed mortgage loan originator may only receive credit for
18 a continuing education course in the year in which the course is taken,
19 and may not take the same approved course in the same or successive
20 years to meet the annual requirements for continuing education.

21 (4) A licensed mortgage loan originator who is an instructor of an
22 approved continuing education course may receive credit for the
23 licensed mortgage loan originator's own annual continuing education
24 requirement at the rate of two hours credit for every one hour taught.

25 (5) A person having successfully completed the education
26 requirements approved by the nationwide mortgage licensing system and
27 registry for any state must have their credits accepted as credit
28 towards completion of continuing education requirements in this state.

29 (6) This section does not preclude any education course, as
30 approved by the nationwide mortgage licensing system and registry, that
31 is provided by the employer of the mortgage loan originator or an
32 entity which is affiliated with the mortgage loan originator by an
33 agency contract, or any subsidiary or affiliate of such employer or
34 entity. Continuing education may be offered either in a classroom,
35 online, or by any other means approved by the nationwide mortgage
36 licensing system and registry.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 19.146
2 RCW to read as follows:

3 The director shall establish a process whereby mortgage loan
4 originators may challenge information entered into the nationwide
5 mortgage licensing system and registry by the director.

6 NEW SECTION. **Sec. 14.** A new section is added to chapter 19.146
7 RCW to read as follows:

8 For the purposes of implementing an orderly and efficient licensing
9 process, the director may establish licensing rules and interim
10 procedures for licensing and acceptance of applications. For
11 previously registered or licensed individuals, the director may
12 establish expedited review and licensing procedures.

13 NEW SECTION. **Sec. 15.** A new section is added to chapter 19.146
14 RCW to read as follows:

15 (1) Except as otherwise provided in section 1512 of the S.A.F.E.
16 act, the requirements under any federal law or chapter 42.56 RCW
17 regarding the privacy or confidentiality of any information or material
18 provided to the nationwide mortgage licensing system and registry, and
19 any privilege arising under federal or state law, including the rules
20 of any federal or state court, with respect to that information or
21 material, continues to apply to the information or material after the
22 information or material has been disclosed to the nationwide mortgage
23 licensing system and registry. Information and material may be shared
24 with all state and federal regulatory officials with mortgage industry
25 oversight authority without the loss of privilege or the loss of
26 confidentiality protections provided by federal law or state law.

27 (2) For the purposes under subsection (1) of this section, the
28 director is authorized to enter agreements or sharing arrangements with
29 other governmental agencies, the conference of state bank supervisors,
30 the American association of residential mortgage regulators, or other
31 associations representing governmental agencies as established by rule,
32 regulation, or order of the director.

33 (3) Information or material that is subject to a privilege or
34 confidentiality under subsection (1) of this section is not subject to:

35 (a) Disclosure under any federal or state law governing the

1 disclosure to the public of information held by an officer or an agency
2 of the federal government or the respective state; or

3 (b) Subpoena or discovery, or admission into evidence, in any
4 private civil action or administrative process unless, with respect to
5 any privilege held by the nationwide mortgage licensing system and
6 registry with respect to that information or material, the person to
7 whom the information or material pertains waives, in whole or in part,
8 in the discretion of that person, that privilege.

9 (4) Chapter 42.56 RCW relating to the disclosure of confidential
10 supervisory information or any information or material described in
11 subsection (1) of this section that is inconsistent with subsection (1)
12 of this section is superseded by the requirements of this section.

13 (5) This section does not apply to the information or material
14 relating to the employment history of, and publicly adjudicated
15 disciplinary and enforcement actions against, mortgage loan originators
16 that is included in the nationwide mortgage licensing system and
17 registry for access by the public.

18 NEW SECTION. **Sec. 16.** A new section is added to chapter 19.146
19 RCW to read as follows:

20 In order to fulfill the purposes of this act, the director is
21 authorized to establish relationships or contracts with the nationwide
22 mortgage licensing system and registry or other entities designated by
23 the nationwide mortgage licensing system and registry to collect and
24 maintain records and process transaction fees or other fees related to
25 licensees or other persons subject to this chapter.

26 NEW SECTION. **Sec. 17.** A new section is added to chapter 19.146
27 RCW to read as follows:

28 Each mortgage broker licensee shall submit to the nationwide
29 mortgage licensing system and registry reports of condition, which must
30 be in the form and must contain the information as the nationwide
31 mortgage licensing system and registry may require.

32 NEW SECTION. **Sec. 18.** A new section is added to chapter 19.146
33 RCW to read as follows:

34 The director is authorized to regularly report violations of this

1 act, as well as enforcement actions and other relevant information, to
2 the nationwide mortgage licensing system and registry.

3 NEW SECTION. **Sec. 19.** This act takes effect January 1, 2010.

4 NEW SECTION. **Sec. 20.** The director of financial institutions or
5 the director's designee may take the actions necessary to ensure this
6 act is implemented on January 1, 2010.

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