

SENATE BILL REPORT

SHB 1328

As of March 28, 2013

Title: An act relating to the department of financial institutions' regulation of mortgage brokers and clarifying the department's existing regulatory authority regarding residential mortgage loan modification services.

Brief Description: Regulating mortgage brokers.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Kirby, Ryu and Maxwell; by request of Department of Financial Institutions).

Brief History: Passed House: 3/07/13, 95-2.

Committee Activity: Financial Institutions, Housing & Insurance: 3/21/13.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: The Department of Financial Institutions (DFI) regulates mortgage brokers and loan originators under the Mortgage Brokers Practices Act (MBPA).

Licensure of Mortgage Brokers. In order to make a loan in Washington, mortgage brokers must be licensed. There are a number of exemptions from licensing under MBPA. One exemption is an attorney licensed to practice law in this state, who is not principally engaged in the business of negotiating residential mortgage loans, when said attorney renders services in the course of their practice as an attorney.

Mortgage broker licenses expire annually. The Director of DFI (Director) must adopt rules for the license renewal process.

Mortgage broker applicants must provide their fingerprints, personal history, business record, and other information required by the Director. The Director must submit the information for a state and federal criminal history background check. The Director may receive nonconviction information but may only disseminate that information to criminal justice agencies.

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.

A mortgage broker must maintain a minimum bond amount. The Director may establish a range of bond amounts based on the dollar amount of loans originated by the licensee. If the Director determines that the required bonds are not reasonably available, the Director must waive that requirement. A suit may be brought against the surety bond by the Director or an aggrieved party for a violation of MBPA or rules adopted by the Director to implement MBPA. A suit must be brought within one year of the alleged violation

Mortgage brokers must pay an annual fee to maintain licensure. If the fee is not paid, DFI must initiate proceedings to revoke the license. Designated brokers of every licensee must complete continuing education requirements. Requirements for mortgage brokers generally include honesty, veracity, provision of required disclosures, and compliance with specific state and federal laws and rules. Mortgage brokers must maintain financial records for at least 25 months.

Loan Originator. Loan originators are employed, retained by, or represent a person required to have a mortgage broker license in the performance of specific activities relating to a residential mortgage loan. Loan originators must be licensed. Loan originator licenses expire and must be renewed. Loan originator licenses may not be assigned or transferred. Licensees seeking to renew their licenses must complete the required continuing education requirements.

The application must include the applicant's name, date of birth, social security number, fingerprints, personal history, business record, and other information required by the Director. The Director must submit information for a state and federal criminal history background check. The Director may receive nonconviction information but may only disseminate that information to criminal justice agencies.

Fees. The Director must establish fees sufficient to cover, but not exceed, the costs of administering MBPA. These fees may include the following:

- an application fee to cover the costs of processing applications;
- an annual assessment paid by each licensee on or before a date specified by rule;
- an investigation fee to cover the costs of any investigation of a licensee or other person. An investigation fee is only charged when the investigation determines that a violation of MPBA and when an order of the Director is issued.

Any increase in fees is subject to the prior legislative approval required by the various tax and fee initiatives passed in recent years, most recently Initiative 1185 which passed in 2012.

Sanctions. The Director may impose fines or order restitution for violations of specific provisions of MBPA. The Director may prohibit an officer, principal, employee, loan originator, or mortgage broker from participating in the affairs of a licensed mortgage broker for violations of specific provisions of MBPA.

Compliance Examinations. DFI may only examine the business of a mortgage broker once in the first five years of being licensed, including the licensing of a branch. The scope of the examination is limited to compliance with the laws and rules related to mortgage brokers. The scope or timeframe may be expanded upon the clear identification of a need to do so.

Investigations. DFI may, at any time, investigate a licensee or any other person in the business of mortgage brokering.

Summary of Bill: Modifications are made to the definitions of borrower and mortgage broker.

Attorney Exemption. The attorney exemption is modified. An attorney is exempt from licensing requirements but must meet the following requirements:

- all mortgage broker or loan originator services (services) must be performed by the attorney while engaged in the practice of law;
- all services must be under a business that is publicly identified and operated as a law practice; and
- all funds associated with the transaction and received by the attorney must be deposited in, maintained in, and disbursed from a trust fund to the extent required by rules regulating the conduct of attorneys.

The requirement that licensees must comply with specific federal laws is replaced with a general requirement to comply with applicable state and federal laws.

Mortgage brokers must maintain financial records for at least three years.

Sanctions. The Director may impose fines or order restitution for any violations of MBPA. The Director may prohibit an officer, principal, employee, loan originator, or mortgage broker from participating in the affairs of a licensed mortgage broker for any violations of MBPA.

Surety Bond. The provision limiting the time to bring a suit against a licensee's surety bond to within one year of the alleged violation is removed.

Appropriation: None.

Fiscal Note: Available.

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

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: Working on this bill was a bumpy road. The attorney exemption is clarified. Other changes are made as required by federal law.

Persons Testifying: PRO: Representative Kirby, prime sponsor.