
SUBSTITUTE SENATE BILL 5659

State of Washington

61st Legislature

2009 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Berkey, Benton, and Marr)

READ FIRST TIME 02/20/09.

1 AN ACT Relating to the consideration of mitigating factors for
2 enforcement actions under the mortgage broker practices act; and adding
3 a new section to chapter 19.146 RCW.

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

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

7 (1) When a licensee voluntarily discloses the deliberate and
8 knowing violation of this chapter by an employee or independent
9 contractor loan originator, and the violation was intended to be
10 concealed from the licensee the director may consider circumstances
11 that mitigate the seriousness of a violation in any investigation or
12 any enforcement action. Mitigating factors include:

13 (a) Whether the licensee voluntarily disclosed of the violation or
14 activity;

15 (b) The timeliness of the disclosure;

16 (c) The likelihood that the director would have discovered the
17 violation in a timely fashion without that voluntary disclosure;

18 (d) The cooperation of the licensee during any investigation of the
19 violation;

1 (e) Any remedial measures taken to correct any flaws in internal
2 procedures to protect against any future violations when the disclosure
3 is by a designated broker, principal, or owner;
4 (f) Whether the licensee has business practices that include:
5 (i) Supervision and training of personnel;
6 (ii) Regular review work performed;
7 (iii) Training in the requirements of this chapter and rules;
8 (iv) Monitoring for compliance under this chapter; and
9 (v) Acting on reports of alleged misconduct;
10 (g) Whether the violation should have been reasonably anticipated;
11 (h) Whether the violation was a matter of inadvertence, simple
12 negligence, or gross negligence;
13 (i) A positive score or report obtained in prior audits, if the
14 licensee has been previously audited; and
15 (j) Any other mitigating factors adopted by the director by rule.
16 (2) When a violation voluntarily disclosed by a licensee is the
17 result of a deliberate and knowing violation by an employee or
18 independent contractor loan originator and was intended to be concealed
19 from the licensee, the director shall pursue the employee or
20 independent contractor loan originator who committed the violation.
21 Such a disclosure shall not by itself trigger an examination or
22 investigation of the licensee based solely upon the voluntary
23 disclosure.

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