
SUBSTITUTE SENATE BILL 5749

State of Washington

61st Legislature

2009 Regular Session

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

READ FIRST TIME 02/13/09.

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; adding a new
6 section to chapter 31.04 RCW; creating new sections; and providing an
7 effective date.

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

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

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

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

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

18 (3) "Borrower" means any person who consults with or retains a
19 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) "Mortgage loan originator" has the same meaning as
11 "loan originator."

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

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

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

24 ~~((+15+))~~ (19) "Residential mortgage loan" means any loan primarily
25 for personal, family, or household use secured by a mortgage or deed of
26 trust on residential real estate upon which is constructed or intended
27 to be constructed a single family dwelling or multiple family dwelling
28 of four or less units.

29 ~~((+16+))~~ (20) "S.A.F.E. act" means the secure and fair enforcement
30 for mortgage licensing act of 2008, or Title V of the housing and
31 economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July
32 30, 2008.

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

1 (22) "Unique identifier" means a number or other identifier
2 assigned by protocols established by the nationwide mortgage licensing
3 system and registry.

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

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

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

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

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

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

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

30 ~~(e) ((Any person making or acquiring a residential mortgage loan~~
31 ~~solely with his or her own funds for his or her own investment without~~
32 ~~intending to resell the residential mortgage loans;+~~

33 ~~(+f))~~ A real estate broker or salesperson licensed by the state who
34 obtains financing for a real estate transaction involving a bona fide
35 sale of real estate in the performance of his or her duties as a real
36 estate broker and who receives only the customary real estate broker's
37 or salesperson's commission in connection with the transaction;

1 ~~((g) Any mortgage broker approved and subject to auditing by the~~
2 ~~federal national mortgage association or the federal home loan mortgage~~
3 ~~corporation;~~

4 ~~(h))~~ (f) The United States of America, the state of Washington,
5 any other state, and any Washington city, county, or other political
6 subdivision, and any agency, division, or corporate instrumentality of
7 any of the entities in this subsection (1) ~~((h))~~ (f); ~~((and~~

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

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

18 (ii) Accepts a loan application, or submits a loan application to
19 a lender;

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

23 (iv) Negotiates rates or terms with a lender on behalf of a
24 borrower; or

25 (v) Provides the disclosure required by RCW 19.146.030(1);

26 (h) Registered mortgage loan originators, or any individual
27 required to be registered; and

28 (i) A manufactured or modular home retailer employee who performs
29 purely administrative or clerical tasks and who receives only the
30 customary salary or commission from the employer in connection with the
31 transaction.

32 (2) ~~((Those persons and their loan originators otherwise exempt~~
33 ~~under subsection (1)(e), (g), or (4) of this section must comply with~~
34 ~~RCW 19.146.0201 through 19.146.080. For violations of RCW 19.146.0201~~
35 ~~through 19.146.080, the director has authority to issue a cease and~~
36 ~~desist order as provided in RCW 19.146.220 and 19.146.227, to impose~~
37 ~~penalties as provided in RCW 19.146.220, and to obtain and review books~~

1 and records that are relevant to any allegation of such a violation as
2 provided in RCW 19.146.235.

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

9 (a) Upon receipt of a license under this subsection, the licensee
10 is required to continue to maintain a valid license, is subject to all
11 provisions of this chapter, and has no further right to claim exemption
12 from the provisions of this chapter except as provided in (b) of this
13 subsection.

14 (b) Any licensee under this subsection who would otherwise be
15 exempted from the requirements of licensing by this section may apply
16 to the director for exemption from licensing. The director shall adopt
17 rules for reviewing such applications and shall grant exemptions from
18 licensing to applications which are consistent with those rules and
19 consistent with the other provisions of this chapter.

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

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

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

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

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

34 It is a violation of this chapter for a loan originator~~((7))~~ or
35 mortgage broker required to be licensed under this chapter~~((7) or~~
36 mortgage broker otherwise exempted from this chapter under RCW
37 19.146.020(1)(e), (g), or (4)) to:

- 1 (1) Directly or indirectly employ any scheme, device, or artifice
2 to defraud or mislead borrowers or lenders or to defraud any person;
- 3 (2) Engage in any unfair or deceptive practice toward any person;
- 4 (3) Obtain property by fraud or misrepresentation;
- 5 (4) Solicit or enter into a contract with a borrower that provides
6 in substance that the mortgage broker may earn a fee or commission
7 through the mortgage broker's "best efforts" to obtain a loan even
8 though no loan is actually obtained for the borrower;
- 9 (5) Solicit, advertise, or enter into a contract for specific
10 interest rates, points, or other financing terms unless the terms are
11 actually available at the time of soliciting, advertising, or
12 contracting from a person exempt from licensing under RCW 19.146.020(1)
13 (~~(g) or (h)~~) (f) or a lender with whom the mortgage broker maintains
14 a written correspondent or loan broker agreement under RCW 19.146.040;
- 15 (6) Fail to make disclosures to loan applicants and
16 noninstitutional investors as required by RCW 19.146.030 and any other
17 applicable state or federal law;
- 18 (7) Make, in any manner, any false or deceptive statement or
19 representation with regard to the rates, points, or other financing
20 terms or conditions for a residential mortgage loan or engage in bait
21 and switch advertising;
- 22 (8) Negligently make any false statement or knowingly and willfully
23 make any omission of material fact in connection with any reports filed
24 by a mortgage broker or in connection with any investigation conducted
25 by the department;
- 26 (9) Make any payment, directly or indirectly, to any appraiser of
27 a property, for the purposes of influencing the independent judgment of
28 the appraiser with respect to the value of the property;
- 29 (10) Advertise any rate of interest without conspicuously
30 disclosing the annual percentage rate implied by such rate of interest;
- 31 (11) Fail to comply with any requirement of the truth-in-lending
32 act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the real
33 estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X,
34 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec.
35 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V,
36 Subtitle A of the financial modernization act of 1999 (known as the
37 "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade
38 commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the

1 Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C.
2 Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the
3 federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a);
4 the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs.
5 6101 to 6108; and the federal trade commission telephone sales rule, 16
6 C.F.R. Part 310, as these acts existed on January 1, 2007, or such
7 subsequent date as may be provided by the department by rule, in any
8 advertising of residential mortgage loans, or any other applicable
9 mortgage broker or loan originator activities covered by the acts. The
10 department may adopt by rule requirements that mortgage brokers and
11 loan originators comply with other applicable federal statutes and
12 regulations in any advertising of residential mortgage loans, or any
13 other mortgage broker or loan originator activity;

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

20 (13) Collect, charge, attempt to collect or charge or use or
21 propose any agreement purporting to collect or charge any fee
22 prohibited by RCW 19.146.030 or 19.146.070;

23 (14)(a) Except when complying with (b) and (c) of this subsection,
24 act as a loan originator in any transaction (i) in which the loan
25 originator acts or has acted as a real estate broker or salesperson or
26 (ii) in which another person doing business under the same licensed
27 real estate broker acts or has acted as a real estate broker or
28 salesperson;

29 (b) Prior to providing mortgage services to the borrower, a loan
30 originator, in addition to other disclosures required by this chapter
31 and other laws, shall provide to the borrower the following written
32 disclosure:

33 THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES
34 HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON
35 REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO
36 YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE
37 MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO
38 PURCHASE THE PROPERTY.

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

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

23 (15) Fail to comply with any provision of RCW 19.146.030 through
24 19.146.080 or any rule adopted under those sections.

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

27 (1) Application for a mortgage broker license under this chapter
28 (~~shall~~) must be (~~in writing~~) made to the nationwide mortgage
29 licensing system and registry and in the form prescribed by the
30 director. The application shall contain at least the following
31 information:

32 (a) The name, address, date of birth, and social security number of
33 the applicant, and any other names, dates of birth, or social security
34 numbers previously used by the applicant, unless waived by the
35 director;

36 (b) If the applicant is a partnership or association, the name,
37 address, date of birth, and social security number of each general

1 partner or principal of the association, and any other names, dates of
2 birth, or social security numbers previously used by the members,
3 unless waived by the director;

4 (c) If the applicant is a corporation, the name, address, date of
5 birth, and social security number of each officer, director, registered
6 agent, and each principal stockholder, and any other names, dates of
7 birth, or social security numbers previously used by the officers,
8 directors, registered agents, and principal stockholders unless waived
9 by the director;

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

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

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

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

37 (3) In order to reduce the points of contact which the federal
38 bureau of investigation may have to maintain, the director may use the

1 nationwide mortgage licensing system and registry as a channeling agent
2 for requesting information from and distributing information to the
3 department of justice or any governmental agency.

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

9 (5) At the time of filing an application for a license under this
10 chapter, each applicant shall pay to the director through the
11 nationwide mortgage licensing system and registry the appropriate
12 application fee in an amount determined by rule of the director in
13 accordance with RCW 43.24.086 to cover, but not exceed, the cost of
14 processing and reviewing the application. The director shall deposit
15 the moneys in the financial services regulation fund, unless the
16 consumer services account is created as a dedicated, nonappropriated
17 account, in which case the director shall deposit the moneys in the
18 consumer services account.

19 ~~((4)(a))~~ (6) Each applicant for a mortgage broker's license shall
20 file and maintain a surety bond, in an amount ~~((of not greater than~~
21 ~~sixty thousand dollars nor less than twenty thousand dollars))~~ which
22 the director deems adequate to protect the public interest, executed by
23 the applicant as obligor and by a surety company authorized to do a
24 surety business in this state as surety. The bonding requirement as
25 established by the director ~~((may))~~ shall take the form of a ~~((uniform~~
26 ~~bond amount for all licensees or the director may establish by rule a~~
27 ~~schedule establishing a))~~ range of bond amounts which shall vary
28 according to the annual ~~((average number of loan originators of a))~~
29 loan origination volume of the licensee. The bond shall run to the
30 state of Washington as obligee, and shall run first to the benefit of
31 the borrower and then to the benefit of the state and any person or
32 persons who suffer loss by reason of the applicant's or its loan
33 originator's violation of any provision of this chapter or rules
34 adopted under this chapter. The bond shall be conditioned that the
35 obligor as licensee will faithfully conform to and abide by this
36 chapter and all rules adopted under this chapter, and shall reimburse
37 all persons who suffer loss by reason of a violation of this chapter or
38 rules adopted under this chapter. Borrowers shall be given priority

1 over the state and other persons. The state and other third parties
2 shall be allowed to receive distribution pursuant to a valid claim
3 against the remainder of the bond. In the case of claims made by any
4 person or entity who is not a borrower, no final judgment may be
5 entered prior to one hundred eighty days following the date the claim
6 is filed. The bond shall be continuous and may be canceled by the
7 surety upon the surety giving written notice to the director of its
8 intent to cancel the bond. The cancellation shall be effective thirty
9 days after the notice is received by the director. Whether or not the
10 bond is renewed, continued, reinstated, reissued, or otherwise
11 extended, replaced, or modified, including increases or decreases in
12 the penal sum, it shall be considered one continuous obligation, and
13 the surety upon the bond shall not be liable in an aggregate or
14 cumulative amount exceeding the penal sum set forth on the face of the
15 bond. In no event shall the penal sum, or any portion thereof, at two
16 or more points in time be added together in determining the surety's
17 liability. The bond shall not be liable for any penalties imposed on
18 the licensee, including, but not limited to, any increased damages or
19 attorneys' fees, or both, awarded under RCW 19.86.090. The applicant
20 may obtain the bond directly from the surety or through a group bonding
21 arrangement involving a professional organization comprised of mortgage
22 brokers if the arrangement provides at least as much coverage as is
23 required under this subsection.

24 ~~((b) Subsection (4)(b) and (c) of this section applies only to~~
25 ~~applications received on or before January 1, 2007. Before January 1,~~
26 ~~2007, in lieu of a surety bond, the applicant may, upon approval by the~~
27 ~~director, file with the director a certificate of deposit, an~~
28 ~~irrevocable letter of credit, or such other instrument as approved by~~
29 ~~the director by rule, drawn in favor of the director for an amount~~
30 ~~equal to the required bond.~~

31 ~~(c) Before January 1, 2007, in lieu of the surety bond or~~
32 ~~compliance with (b) of this subsection, an applicant may obtain~~
33 ~~insurance or coverage from an association comprised of mortgage brokers~~
34 ~~that is organized as a mutual corporation for the sole purpose of~~
35 ~~insuring or self-insuring claims that may arise from a violation of~~
36 ~~this chapter. An applicant may only substitute coverage under this~~
37 ~~subsection for the requirements of (a) or (b) of this subsection if the~~
38 ~~director, with the consent of the insurance commissioner, has~~

1 ~~authorized such association to organize a mutual corporation under such~~
2 ~~terms and conditions as may be imposed by the director to ensure that~~
3 ~~the corporation is operated in a financially responsible manner to pay~~
4 ~~any claims within the financial responsibility limits specified in (a)~~
5 ~~of this subsection.))~~

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

8 The director shall establish fees (~~by rule in accordance with the~~
9 ~~policy established in RCW 43.24.086 and fees shall be~~) sufficient to
10 cover, but not exceed, the costs of administering this chapter. These
11 fees may include:

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

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

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

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

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

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

34 (1) For the purposes of investigating violations or complaints
35 arising under this chapter, the director or his or her designee may

1 make an investigation of the operations of any mortgage broker or loan
2 originator as often as necessary in order to carry out the purposes of
3 this chapter.

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

6 (a) For the purpose of examinations, the director or his or her
7 designee may have access to such books and records during normal
8 business hours and interview the officers, principals, loan
9 originators, employees, independent contractors, and agents of the
10 licensee concerning their business.

11 (b) For the purposes of investigating violations or complaints
12 arising under this chapter, the director may at any time, either
13 personally or by a designee, investigate the business, including but
14 not limited to the books, accounts, records, and files used therein, of
15 every licensee and of every person engaged in the business of mortgage
16 brokering, whether such a person acts or claims to act under, or
17 without the authority of, this chapter.

18 (c) The director or designated person may direct, subpoena, or
19 order the attendance of and examine under oath all persons whose
20 testimony may be required about the loans or the business or subject
21 matter of any such examination or investigation, and may direct,
22 subpoena, or order such person to produce books, accounts, records,
23 files, and any other documents the director or designated person deems
24 relevant to the inquiry.

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

31 (a) A review for trust accounting compliance;

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

35 (c) Interviews for the purpose of understanding business and
36 solicitation practices, transactional events, disclosure compliance,
37 complaint resolution, or determining specific compliance with this
38 chapter and the attendant rules; and

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

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

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

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

12 (c) The criteria by which the frequency of examinations will be
13 determined.

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

18 (a) Expand the examination review to locations other than the
19 examined location regardless of the number of years a location has held
20 a license; or

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

24 (6) The director or a designee may consider reports made by
25 independent certified professionals for the mortgage broker covering
26 the same general subject matter as the examination. The director or a
27 designee may incorporate all or part of the report in the report of the
28 examination.

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

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

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

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

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

6 (1) Each loan originator applicant shall complete at least twenty
7 hours of prelicensing education approved by the nationwide mortgage
8 licensing system and registry. The prelicensing education shall
9 include at least three hours of federal law and regulations; three
10 hours of ethics, which shall include instruction on fraud, consumer
11 protection, and fair lending issues; two hours of training related to
12 lending standards for the nontraditional mortgage product marketplace;
13 and at least two hours of training specifically related to Washington
14 law.

15 (2) A loan originator applicant having successfully completed the
16 prelicensing education requirements approved by the nationwide mortgage
17 licensing system and registry for any state shall be accepted as credit
18 towards completion of prelicensing education requirements in this
19 state.

20 (3) This chapter does not preclude any prelicensing education
21 course, as approved by the nationwide mortgage licensing system and
22 registry, that is provided by the employer of the loan originator
23 applicant or an entity which is affiliated with the applicant by an
24 agency contract, or any subsidiary or affiliate of such an employer or
25 entity. Prelicensing education may be offered either in a classroom,
26 online, or by any other means approved by the nationwide mortgage
27 licensing system and registry.

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

30 (1) To obtain a loan originator license, an individual must pass a
31 test developed by the nationwide mortgage licensing system and registry
32 and administered by a test provider approved by the nationwide mortgage
33 licensing system and registry based upon reasonable standards.

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

1 (a) An individual may retake a test three consecutive times with
2 each consecutive taking occurring at least thirty days after the
3 preceding test.

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

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

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

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

18 (1) Application for a loan originator 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 loan originator applicant, and any other names, dates of birth, or
25 social security numbers previously used by the loan originator
26 applicant, unless waived by the director; and

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

30 (2)(a) As part of or in connection with an application for any
31 license under this section, or periodically upon license renewal, the
32 loan originator applicant shall furnish information concerning his or
33 her identity, including fingerprints for submission to the Washington
34 state patrol, the federal bureau of investigation, (~~and~~) the
35 nationwide mortgage licensing system and registry, or any governmental
36 agency or entity authorized to receive this information for a state and
37 national criminal history background check; personal history;

1 experience; business record; purposes; and other pertinent facts, as
2 the director may reasonably require. As part of or in connection with
3 an application for a license under this chapter, or periodically upon
4 license renewal, the director is authorized to receive criminal history
5 record information that includes nonconviction data as defined in RCW
6 10.97.030. The department may only disseminate nonconviction data
7 obtained under this section to criminal justice agencies. This section
8 does not apply to financial institutions regulated under chapters 31.12
9 and 31.13 RCW and Titles 30, 32, and 33 RCW.

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

15 (c) In order to reduce the points of contact which the director may
16 have to maintain, the director may use the nationwide mortgage
17 licensing system and registry as a channeling agent for requesting and
18 distributing information to and from any source so directed by the
19 director.

20 (d) As part of or in connection with an application for a license
21 under this section, the loan originator applicant must furnish to the
22 nationwide mortgage licensing system and registry personal history and
23 experience in a form prescribed by the nationwide mortgage licensing
24 system and registry, including the submission of authorization for the
25 nationwide mortgage licensing system and registry and the director to
26 obtain:

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

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

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

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

3 **Sec. 10.** RCW 19.146.310 and 2006 c 19 s 20 are each amended to
4 read as follows:

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

7 (a) The loan originator applicant has paid the required license
8 fees;

9 (b) The loan originator applicant has met the requirements of RCW
10 19.146.300;

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

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

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

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

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

30 (g) The loan originator applicant has demonstrated financial
31 responsibility, character, and general fitness such as to command the
32 confidence of the community and to warrant a belief that the business
33 will be operated honestly and fairly within the purposes of this
34 chapter. For the purposes of this section, an applicant has not
35 demonstrated financial responsibility when the applicant shows
36 disregard in the management of his or her financial condition. A
37 determination that an individual has shown disregard in the management

1 of his or her financial condition may include, but is not limited to,
2 an assessment of: Current outstanding judgments, except judgments
3 solely as a result of medical expenses; current outstanding tax liens
4 or other government liens and filings; foreclosures within the last
5 three years; or a pattern of seriously delinquent accounts within the
6 past three years; and

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

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

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

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

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

35 (6) To prevent undue delay in the issuance of a loan originator
36 license and to facilitate the business of a loan originator, an interim
37 loan originator license with a fixed date of expiration may be issued

1 when the director determines that the loan originator has substantially
2 fulfilled the requirements for loan originator licensing as defined by
3 rule.

4 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.146
5 RCW to read as follows:

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

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

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

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

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

32 (6) This section does not preclude any education course, as
33 approved by the nationwide mortgage licensing system and registry, that
34 is provided by the employer of the mortgage loan originator or an
35 entity which is affiliated with the mortgage loan originator by an
36 agency contract, or any subsidiary or affiliate of such employer or

1 entity. Continuing education may be offered either in a classroom,
2 online, or by any other means approved by the nationwide mortgage
3 licensing system and registry.

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

6 The director shall establish a process whereby mortgage loan
7 originators may challenge information entered into the nationwide
8 mortgage licensing system and registry by the director.

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

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

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 31.04 RCW
17 to read as follows:

18 An individual defined as a mortgage loan originator shall not
19 engage in the business of a mortgage loan originator without first
20 obtaining and maintaining annually a license under this act. Each
21 licensed mortgage loan originator must register with and maintain a
22 valid unique identifier issued by the nationwide mortgage licensing
23 system and registry.

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

26 (1) Except as otherwise provided in section 1512 of the S.A.F.E.
27 act, the requirements under any federal law or chapter 42.56 RCW
28 regarding the privacy or confidentiality of any information or material
29 provided to the nationwide mortgage licensing system and registry, and
30 any privilege arising under federal or state law, including the rules
31 of any federal or state court, with respect to that information or
32 material, continues to apply to the information or material after the
33 information or material has been disclosed to the nationwide mortgage
34 licensing system and registry. Information and material may be shared

1 with all state and federal regulatory officials with mortgage industry
2 oversight authority without the loss of privilege or the loss of
3 confidentiality protections provided by federal law or state law.

4 (2) For the purposes under subsection (1) of this section, the
5 director is authorized to enter agreements or sharing arrangements with
6 other governmental agencies, the conference of state bank supervisors,
7 the American association of residential mortgage regulators, or other
8 associations representing governmental agencies as established by rule,
9 regulation, or order of the director.

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

12 (a) Disclosure under any federal or state law governing the
13 disclosure to the public of information held by an officer or an agency
14 of the federal government or the respective state; or

15 (b) Subpoena or discovery, or admission into evidence, in any
16 private civil action or administrative process unless, with respect to
17 any privilege held by the nationwide mortgage licensing system and
18 registry with respect to that information or material, the person to
19 whom the information or material pertains waives, in whole or in part,
20 in the discretion of that person, that privilege.

21 (4) Chapter 42.56 RCW relating to the disclosure of confidential
22 supervisory information or any information or material described in
23 subsection (1) of this section that is inconsistent with subsection (1)
24 of this section is superseded by the requirements of this section.

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

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

32 In order to fulfill the purposes of this act, the director is
33 authorized to establish relationships or contracts with the nationwide
34 mortgage licensing system and registry or other entities designated by
35 the nationwide mortgage licensing system and registry to collect and
36 maintain records and process transaction fees or other fees related to
37 licensees or other persons subject to this chapter.

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

3 Each mortgage broker licensee shall submit to the nationwide
4 mortgage licensing system and registry reports of condition, which must
5 be in the form and must contain the information as the nationwide
6 mortgage licensing system and registry may require.

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

9 The director is authorized to regularly report violations of this
10 act, as well as enforcement actions and other relevant information, to
11 the nationwide mortgage licensing system and registry.

12 NEW SECTION. **Sec. 19.** (1) In order to facilitate an orderly
13 transition to licensing and minimize disruption in the mortgage
14 marketplace, sections 4, 6 through 9, 11, 12, 14, and 17 are effective
15 January 1, 2010.

16 (2) In order to facilitate an orderly transition to licensing and
17 minimize disruption in the mortgage marketplace, mortgage loan
18 originators who were previously exempt as exclusive agents under RCW
19 19.146.020(1)(a)(ii) must obtain a mortgage loan originator license
20 under this chapter before July 1, 2010.

21 NEW SECTION. **Sec. 20.** The director of financial institutions or
22 the director's designee may take the actions necessary to ensure this
23 act is implemented on July 1, 2010.

--- END ---