

SENATE BILL REPORT

SB 5759

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 11, 2009

Title: An act relating to regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008.

Brief Description: Regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008.

Sponsors: Senators Berkey, Benton and Hobbs.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/04/09, 2/11/09 [DPS-WM].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5759 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Staff: Diane Smith (786-7410)

Background: The Consumer Loan Act (CLA) has similarities to the Mortgage Broker Practices Act in that the activities of mortgage brokers are regulated by both acts. The definition of "mortgage broker" is the same in both acts, except that a licensee under the CLA cannot receive compensation as both a mortgage broker and a consumer loan licensee, from the same transaction.

The CLA applies to loans secured by liens on real property and to unsecured loans. It applies to open-end loans and allows for charges and fees for dishonored checks. The interest rate is limited to 25 percent simple interest per year. The loan origination fee is limited to 4 percent of the first \$20,000 and 2 percent thereafter of the principal amount. The loan origination fee may be included in the principal balance of the loan. Other fees incident to the loan charged by third parties, such as the cost of credit reporting, title search, appraisal, and pest and structural inspections, may also be included in the principal balance of the loan if the licensee actually paid for these services.

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.

Federal legislation, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act), mandates either that the states create a Nationwide Mortgage Licensing System and Registry (Registry) and each state meet federal requirements for licensing and registering loan originators or the Secretary of the Federal Department of Housing and Urban Development (HUD) will license and register loan originators. The purpose of the Registry is to provide a comprehensive licensing, supervisory, and tracking system for loan originators.

The federal legislation has ten objectives. These objectives are uniformity in licensing and reporting requirements for state-licensed loan originators; provision of a comprehensive licensing and supervisory database; improved information flow among regulators; increased accountability and tracking of loan originators; streamlining of the licensing process and reduction of the regulatory burden; enhancement of consumer protections and anti-fraud measures; enhanced and free access for consumers to information about the professional history of loan originators; establishment of a means by which loan originators would be required to act in the best interest of the consumer; facilitation of responsible behavior and comprehensive training and examination requirements in the subprime mortgage market; and facilitation of collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators.

The state licensing law must meet six minimum requirements to comply with federal law. These requirements involve effective state supervision and enforcement of state and federal law; registration of all state-licensed loan originators with the Registry; reporting of violations of law and enforcement actions to the Registry; having a process for challenging information contained in the Registry; and establishment of minimum net worth or surety bonding requirements or establishment of a recovery fund.

The federal law has a one-year deadline, with some exceptions, for states to comply. The deadline date is July 30, 2009.

Summary of Bill (Recommended Substitute): Mortgage loan originators are made subject to the CLA.

The definitions in the CLA are largely preserved with the exception of the terms "making a loan," "mortgage broker," and "loan originator." The only change that is significantly substantive is the change to the definition of loan originator. This definition is expanded and clarified with references distinguishing it from other professions and activities.

Nine new terms are defined as follows: depository institution; federal banking agencies; loan processor; nationwide mortgage licensing system and registry; registered mortgage loan originator; residential mortgage loan; unique identifier; and individual servicing a mortgage loan.

All loans made by consumer loan company licensees are regulated by the CLA except those loans and financial institutions otherwise regulated by the Department of Financial Institutions (DFI), nonresidential loans, loans made by the housing trust fund, loans made by the federal government for low-income housing, loans to an immediate family member,

people using their own funds who make five or fewer residential real estate loans and do not sell those loans, loans made by credit card, financial institutions regulated by the federal government, and attorneys.

Applications for licensure must be made to and the application fees paid to the Registry. The application must be made on a form as prescribed by DFI. Applications must include fingerprints and other identifying information. The minimum information that must be contained on the application is specified. The amount of application or annual renewal fee to be paid to the Registry is up to \$150.

The applicant for licensure as a loan originator may never have had a license revoked and never been convicted of a felony involving fraud, dishonesty, breach of trust, or money laundering. The applicant must also demonstrate financial responsibility. This means the applicant cannot have shown disregard in the management of the applicant's own financial condition. This could include current outstanding judgments; tax liens; or foreclosure or a pattern of seriously delinquent accounts within the last three years.

Roles for the Registry include approval of minimum pre-licensing educational requirements, development of the licensing test, and approval of the provider of the test that applicants must pass in order to become licensed. The loan originator must complete a minimum of eight hours of continuing education. Each applicant must complete a minimum of 20 hours of prelicensing education.

DFI must establish a process by which mortgage loan originators may challenge the information that DFI enters into the Registry.

The information and materials disclosed to the Registry are subject to existing state and federal privacy or confidentiality laws. DFI may share information with other governmental agencies and regulatory associations without the loss of any privilege or confidentiality.

DFI may use the Registry as the channeling agent for requesting information from, and distributing information to, any governmental agency or any other source.

The minimum penal sum of the surety bond amount is changed to \$30,000 with the total possible based on the annual dollar amount of loans originated.

A one-page disclosure must be provided to the borrower under all consumer loans secured by a lien on real property. This is the same disclosure required by the Mortgage Lending and Homeownership Act of 2008.

DFI has authority to retain attorneys, accountants, and other professionals as examiners or investigators and to charge the licensee for the cost of those services.

Loan originators and loan processors must be licensed under the CLA and maintain a valid unique identifier issued by the Registry. The loan originator must use this number in a conspicuous manner in all business dealings; however, this is not required of consumer loan licenses. Registered loan originators working for depository institutions are exempt from the act.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): The term "individual servicing a mortgage loan" is defined and distinguished from a mortgage loan originator by having a delayed effective date for the individual servicing a mortgage loan's inclusion in the mortgage loan originator definition. This delayed effective date is July 1, 2011.

The organization of the exceptions to the Consumer Loan Act is changed. Sections exempting or excepting loan originators are separated from those that apply to consumer loan companies. The references to the exceptions for consumer loan companies are clarified to apply to the entities.

Several conjunctives are changed to disjunctives, including in the list of entities to which identifying information, including fingerprints, must be sent.

Existing law requiring a \$150 licensing fee for loan originators is changed to "fee of up to \$150."

References are clarified. DFI's rule-making authority is clarified.

The Nationwide Mortgage Licensing System and Registry's administrative functions are removed from the bill.

The effective date for certain sections that impose new licensing requirements on consumer loan companies and mortgage loan originators is delayed to July 1, 2010.

The effective date for the change in bonding requirements, as well as the other application requirements, is delayed to January 1, 2010.

Appropriation: None.

Fiscal Note: Available.

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

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: PRO: The federal S.A.F.E. Act requires these changes to our law so that HUD will not be required to step in. DFI is to be commended. Consumer loan agencies do not want dual regulation. While there will be more amendments, the hope is that all will be agreed.

Persons Testifying: PRO: Deb Bortner, DFI; Lisa Thatcher, Washington State Financial Services Association.