
Business & Financial Services Committee

HB 1838

Brief Description: Concerning small loan lead generation.

Sponsors: Representatives Kelley and Ryu.

Brief Summary of Bill

- Prohibits small loan lead generation unless certain conditions are met.
- Makes unlicensed small loan lead generation a Class B felony.

Hearing Date: 2/11/11

Staff: Jon Hedegard (786-7127).

Background:

Payday Loans.

Small loans (better known as "payday loans") are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act). The Act contains provisions for the licensing and regulation of businesses offering services related to check cashing and the selling of money orders, drafts, checks, and other commercial paper. The phrase "payday loan" refers to a type of short-term, unsecured loan that is typically offered to consumers by a business outlet offering check cashing services. In a typical payday loan transaction, the borrower writes the lender a post-dated check and, in return, the lender provides a lesser amount of cash to the consumer after subtracting interest and fees. Following this initial transaction, the lender holds the check for a specified period, during which the consumer has the option of either redeeming the check by paying the face amount to the lender or allowing the lender to cash the check after the loan period has expired.

Licensing.

A person or entity must be licensed to engage in the business of check cashing or check selling unless exempt from licensing requirements. A licensee must have a small loan endorsement to

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their check cashing or check selling license to make small loans in the state. An endorsement is required for each location where a licensee makes small loans. Applicants for a license or an endorsement must provide certain information and meet financial requirements.

Prohibited Practices.

It is a violation of the Act for any person to:

- directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, defraud or mislead any lender, or defraud or mislead any person;
- directly or indirectly engage in any unfair or deceptive practice toward any person;
- directly or indirectly obtain property by fraud or misrepresentation; and
- make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement.

Any transaction in violation of a prohibited practice is uncollectible and unenforceable.

Criminal Penalties.

Any person who violates or participates in the violation of the Act, a rule of the Director, or orders of the Director is guilty of a misdemeanor. A misdemeanor is punishable by:

- imprisonment for not more than 90 days;
- a fine to \$1,000; or
- both imprisonment and a fine.

A Class B felony is punishable by:

- imprisonment for not more than 12 months in jail;
- a maximum fine of \$20,000; or
- both imprisonment and a fine.

Agency Enforcement.

The Director may impose sanctions against any:

- licensee;
- applicant; or
- director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

Sanctions may include:

- the denial, revocation, suspension, or conditioning of a license;
- an order to cease and desist from specific practices;
- the imposition of a fine not to exceed \$100 per day for each day's violation;
- the provision of restitution to borrowers or other injured parties; and
- the removal from office or banning from participation in the affairs of any licensee.

Consumer Protection Act.

A violation of the Act is a violation of the Consumer Protection Act (CPA). Remedies under the CPA do not affect any other remedy available to an injured party. In a suit for a CPA violation, an injured party may sue for:

- the actual damages sustained;
- the costs of the suit;
- reasonable attorney's fees; and

- additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are capped at \$25,000.

The Attorney General may also sue to:

- prevent or restrain violations of the CPA; and
- seek restitution for persons injured by violation of the CPA.

Summary of Bill:

Small Loan Lead Generation.

"Small loan lead generation" is defined as collecting personal or financial information about potential borrowers that is sold or distributed to a:

- licensee with a small loan endorsement before an application for a small loan is directly received by the licensee; or
- person or entity that is required to have a license and a small loan endorsement before an application for a small loan is directly received by that person or entity.

"Small loan lead generation" includes activities that do not result in the making of a small loan.

"Small loan lead generation" does not include the use of a web site that does not permit residents of the state to provide their personal or financial information.

A small loan lead generator must have a license and an endorsement. When engaging in small loan lead generation, a person must conspicuously disclose that:

- they are not the entity that will be providing a small loan to the consumer; and
- the consumer's personal and financial information will be sold or provided to one or more licensees with a small loan endorsement.

When advertising the availability of small loans, a person must disclose their Washington license number in the advertisement.

Prohibited Practices.

It is a prohibited practice for a person to engage in small loan lead generation through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a license and small loan endorsement

Criminal Penalties.

It is a Class B felony for any person to violate or participate in the violation of the prohibited practice of engaging in small loan lead generation through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a license and small loan endorsement.

Appropriation: None.

Fiscal Note: Requested on 02/09/11.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.