

HOUSE BILL REPORT

HB 1838

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to small loan lead generation.

Brief Description: Concerning small loan lead generation.

Sponsors: Representatives Kelley and Ryu.

Brief History:

Committee Activity:

Business & Financial Services: 2/11/11, 2/15/11 [DPS].

Brief Summary of Substitute Bill

- Requires a person in the business of small loan lead generation to be licensed.
- Requires certain disclosures by a small loan lead generator.
- Makes certain activities related to small loan lead generation an unranked class B felony.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Blake, Hudgins, Hurst, Pedersen, Ryu and Stanford.

Minority Report: Do not pass. Signed by 5 members: Representatives Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Condotta, Parker and Rivers.

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

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.

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 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, lender, or 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 of the DFI (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 Substitute Bill:

Small Loan Lead Generation.

"Small loan lead generation" is defined as:

- collecting personal or financial information from a Washington borrower or potential borrower; and
- selling or distributing that information to a licensee for the purpose of making a small loan, prior to that licensee receiving an application for a small loan from that borrower or potential borrower.

"Small loan lead generation" does not include collecting personal or financial information from a Washington borrower or potential borrower and distributing or selling that information to a licensee if:

- the licensee has received an application for a small loan from the borrower or potential borrower before the information is sold or distributed to that licensee; or
- the information is provided for use by the licensee in determining whether to make a loan to the borrower or potential borrower.

"Small loan lead generation" does not require the making of a small loan.

Disclosure.

When engaging in small loan lead generation, a person required to be licensed must disclose that:

- they are not the entity that will be providing a small loan to the consumer;
- the consumer's personal and financial information will be sold or provided to one or more licensees with a small loan endorsement; and
- the small loan lead generator is licensed by the State of Washington.

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

License Required.

Any person in the business of small loan lead generation must be licensed. The Director may establish a different yearly assessment for small loan lead generators and may waive licensing requirements for small loan lead generators.

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; or
- provide small loan lead generation for a person that is required to obtain a license or small loan endorsement but does not have the license or small loan endorsement.

Criminal Penalties.

It is a class B felony for any 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; or
- provide small loan lead generation for a person that is required to obtain a license or small loan endorsement but does not have the license or small loan endorsement.

Substitute Bill Compared to Original Bill:

The definition of "small loan lead generator" is modified. The provisions requiring a license for small loan lead generators are modified. Disclosure provisions are modified. The provisions making it a prohibited practice and a crime for any person to provide small loan lead generation for an unlicensed person are added.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 15, 2011.

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

Staff Summary of Public Testimony:

(In support) The substance of this bill was previously heard in this committee during the public hearing on House Bill (HB) 1644. The portions of HB 1644 that applied to small loan lead generators became this bill. Under this bill, gathering personal or financial information to give to a small loan lender would require a license. There are clear and appropriate exemptions from licensure.

(With concerns) Consumer reporting agencies may provide language asking for an additional exemption for consumer reporting agencies. The exemption may include a reference to the state Fair Credit Reporting Act or to federal law.

Persons Testifying: (In support) Representative Kelly, prime sponsor.

(With concerns) Cliff Webster, Consumer Data Industry Association.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.