SENATE BILL REPORT
HB 1195

As of March 4, 2011

Title: An act relating to clarifying that a license and endorsement are needed to make small loans.

Brief Description: Clarifying that a license and endorsement are needed to make small loans.

Sponsors: Representatives Kelley and Santos.

Brief History: Passed House: 3/01/11, 97-0.
Committee Activity: Financial Institutions, Housing & Insurance:

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

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 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.

Agency Enforcement. The Director of DFI may impose sanctions against any:

- licensee;

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- 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.

<u>Consumer Protection Act.</u> 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 attorneys' 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: Language is restructured so the provision that prevented a licensee from making a loan without an endorsement now states that no person may make a small loan without a license and an endorsement.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.