

SENATE BILL REPORT

SB 5303

As of February 8, 2011

Title: An act relating to loans made under the consumer loan act.

Brief Description: Regulating loans made under the consumer loan act.

Sponsors: Senators Rockefeller, White, Tom, Nelson, Shin, Keiser, Fraser, Parlette and Kline.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/01/11.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: The Consumer Loan Act (CLA) authorizes the Department of Financial Institutions (DFI) to regulate consumer loan companies doing business in Washington. Consumer loan companies include mortgage lenders and consumer finance companies.

License Required. No person may engage in the business of making secured or unsecured loans of money, credit, or things in action unless licensed by the DFI under the CLA or exempt from licensure. The CLA provides exemptions from licensing for:

- any person making loans primarily for business, commercial, or agricultural purposes, or making loans made to government or government agencies or instrumentalities, or to an organization as defined in the federal Truth in Lending Act;
- an entity licensed as a bank, savings bank, trust company, savings and loan association, building and loan association, or credit union under state or federal law;
- entities licensed as pawnbrokers;
- entities making loans for retail installment sales of goods and services;
- entities licensed as a check casher or seller;
- entities making loans under the Housing Trust Fund;
- entities making loans under programs of the federal government program that provide funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing;
- nonprofit housing organizations making loans, or loans made, under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing

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- or repairing housing or the development of housing for low-income state residents; and
- entities making loans which are not residential mortgage loans under a credit card plan.

An applicant for a license and any officers and principals of the applicant must undergo a background check. A licensee must maintain a surety bond or meet other specified financial requirements. The amount of the bond is based on the annual dollar amount of loans originated with a minimum amount of \$30,000.

Powers of a CLA Licensee. A CLA licensee may:

- lend money at a rate that does not exceed 25 percent per annum;
- charge a borrower a nonrefundable, prepaid, loan origination fee. The fee is limited to 4 percent of the first \$20,000 loaned and 2 percent of any amount above \$20,000. The fee may be included in the principal balance of the loan;
- agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;
- in connection with a loan secured by real estate, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;
- charge and collect a penalty of not more than 10 percent of any installment payment delinquent ten days or more;
- collect fees and expenses related to a collection when a debt is referred to an attorney who is not a salaried employee of the licensee;
- make open-end loans as provided in the CLA;
- charge a fee for dishonored checks; and
- sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

Prohibited Practices. There are a variety of prohibited practices under the CLA to ensure fair, honest, and open practices.

Administrative Enforcement. The Director of the DFI (Director) may deny applications or renewals or suspend or revoke licenses for specified actions or failures to act by an applicant or licensee. The Director may impose fines for violations. The Director may issue an order directing the licensee, its employee or loan originator, or other person subject to the CLA to:

- cease and desist from conducting business in a manner that is injurious to the public or violates any provision of the CLA;
- take action necessary to comply with the CLA; or
- make restitution to a borrower or other person who is injured by a CLA violation.

Penalties. Violations of the CLA are violations of the Consumer Protection Act (CPA). The Office of the Attorney General may bring an action on behalf of persons injured by a violation of the CPA. A private party may also bring an action to enforce the CPA. The CPA allows an injured party to receive treble damages, up to a maximum of \$25,000.

Certain violations are gross misdemeanors. A gross misdemeanor is punishable by up to one year in jail, or by a fine in an amount fixed by the court of not more than \$5,000 or by both such confinement and fine.

In 2009 the statute concerning the exemptions was amended in two different bills. The difference in language could not be reconciled by the Code Reviser. The result is two different overlapping statutes in law.

Summary of Bill: Under the Consumer Loan Act, it is clarified that the exemption regarding loans made primarily for business, commercial, or agricultural purposes does not apply to loans that are secured by a lien on the borrower's primary residence.

Technical changes are made.

Appropriation: None.

Fiscal Note: Available.

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

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: There is a loophole in the law that allows lenders of last resort to take advantage of people by providing a commercial loan that is secured by a borrower's primary residence. When a loan is deemed commercial it is not subject to the Consumer Loan Act and its consumer protections. It has been documented in the media how borrower's don't understand they are signing over their house and in no way have these loans been commercial in nature. The statute needs to be updated to address this issue. Also the statute needs a clean-up due to two bills that passed referencing the same section, creating an overlap that couldn't be fixed by the Code Reviser.

Persons Testifying: PRO: Senator Rockefeller, prime sponsor; David Leen, private attorney; Tom Echlos, Washington State Financial Services Association.