

SENATE BILL REPORT

SB 6173

As of January 25, 2012

Title: An act relating to making technical corrections, modernizing statutes, and streamlining enforcement authorities of nondepository institutions regulated by the department of financial institutions.

Brief Description: Concerning nondepository institutions regulated by the department of financial institutions.

Sponsors: Senators Hobbs, Benton, Prentice, Keiser and Fain; by request of Department of Financial Institutions.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/18/12.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: The Department of Financial Institutions (DFI) regulates a wide variety of professions and organizations. The Director of DFI (Director) is appointed by the Governor.

Consumer Loan Companies. Consumer loan companies are regulated and licensed under the Consumer Loan Act (CLA). A consumer loan company may make secured loans, including home loans, or unsecured loans. CLA limits the rates and fees lenders may charge on loans, restricts certain loan provisions such as prepayment penalties, requires that lenders fully disclose the terms of loans, and prohibits lenders from engaging in unfair and deceptive acts and practices. Individuals who make residential loans under CLA must be licensed as mortgage loan originators.

There are a number of exemptions under CLA, including an exemption for entities making loans under the Retail Installment Sales Act (RISA). The Director may take a number of disciplinary and enforcements actions under CLA. The Director may only issue a subpoena if the Director has required:

- attendance and examination under oath and the licensee has not attended or testified;
or
- documents and the licensee has not produced the required documents.

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.

Check Cashers and Sellers. The state regulates check cashers and sellers under the Check Cashers and Sellers Act. A check casher is a person or entity that for compensation, engages in the business of cashing checks, drafts, money orders, or other commercial paper. A check seller means a person or entity that for compensation, engages in the business of selling checks, drafts, money orders, or other commercial paper. A licensed check casher or seller may only make a small loan (also known as a payday loan) if the check casher or seller has a small loan endorsement to their license.

The Director may issue a statement of charges to licensees or applicants for a license if, in the opinion of the director, the licensee or applicant has engaged in a prohibited act, outlined in statute.

The Director may ban any person from participating in the affairs of a licensee for a number of reasons. The Director may impose sanctions against any: licensee; applicant; or director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

Mortgage Brokers. DFI licenses mortgage brokers and mortgage loan originators under the Mortgage Broker Practices Act (MBPA). The MBPA has provisions regarding licensing, continuing education, prohibited practices, examinations, investigations, and criminal, civil, and administrative penalties for mortgage brokers and loan originators.

Escrow Agents. Escrow agents are regulated by DFI under the Escrow Agent Registration Act (the Escrow Act). The Escrow Act has provisions regarding licensing, prohibited practices, examinations, investigations, and penalties.

Money Transmitters. DFI regulates money services businesses (money transmitters and currency exchangers) under the Uniform Money Services Act. Money transmission is the receipt of money for the purpose of transmitting or delivering the money to another location, whether inside or outside the United States. The transmission or delivery of the money can take place by any means, including wire, facsimile, or electronic transfer.

Mortgage Lending. Mortgage lenders may fall into a number of regulatory categories, including banks, credit unions, consumer loan companies and mortgage bankers.

Banks and credit unions may be chartered with the state and are regulated by the state. They also may be regulated under a national charter. A bank or credit union may also seek to convert from a state to a national charter or vice versa.

Mortgage lenders must follow a number of state and federal laws, including laws that provide disclosure to borrowers and potential borrowers.

Summary of Bill: Consumer Loan Companies. *Exemptions.* RISA exemption in CLA is amended to exclude the selling of prepaid access devices. An exemption from loan originator licensing is created for an individual who offers or negotiates a residential mortgage loan secured by the individual's residence.

Prohibited practices. It is a prohibited practice to fail to comply with other applicable state or federal laws or regulations; or make a loan from an unlicensed location.

Enforcement. The Director may:

- order refunds to consumers harmed as a result of a violation of CLA;
- ban any person from participating in the affairs of a licensee if the person violates statutory provisions regarding the disclosure of fees and costs to borrower, reporting requirements and recordkeeping requirements, or mortgage loan originator licensing requirements;
- informally settle complaints and enforcement actions, including requiring payment to DFI for the purposes of financial literacy and education; and
- issue a subpoena requiring attendance or the production of documents without a finding that the licensee has not attended or testified, or produced the required documents. A prior failure to attend or testify or produce documents is no longer required before a subpoena is issued.

Check Cashers and Sellers Act. The definition of licensee is modified to specifically include a check casher or seller located in or outside of the state of Washington and those check cashers and sellers who should have a small loan endorsement.

The Director may require licensees to obtain a license or transition an existing license using a multistate licensing system; and informally settle complaints and enforcement actions, including requiring payment to DFI for the purposes of financial literacy and education.

It is a prohibited practice for a check casher or check seller to sell prepaid access devices in a retail installment loan under RISA; advertise a statement that is false, misleading deceptive or that omits material information; fail to pay annual assessments by due date; or failure to pay other monies due the Director.

The Director may issue a statement of charges for omitting material information on an application; knowingly or negligently omitting material information in an exam or investigation; failing to pay an assessment or failing to maintain the required bond; or violating any applicable federal or state law.

In addition to licensees and applicants for licenses, the Director may issue a statement of charges for directors, officers, sole proprietors, partners, or controlling persons if they directed or instructed the behavior, or had knowledge of the conduct and allowed it; or knew or should have known of the conduct in time to prevent it or minimize consequences and did not take action.

Mortgage Brokers. The Director may informally settle complaints and enforcement actions, including requiring payment to DFI for the purposes of financial literacy and education.

Escrow Agents and Money Transmitters. The Director may:

- require licensees to obtain a license or transition an existing license using a multistate licensing system; and
- informally settle complaints and enforcement actions, including requiring payment to DFI for the purposes of financial literacy and education.

Mortgage Lending. Disclosures that comply with the federal Real Estate Settlement Procedures Act are deemed to be compliant with disclosures required under state law.

Appropriation: None.

Fiscal Note: Available.

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: This bill modernizes nondepository statutes and permits for multi-state licenses so the agency won't have to duplicate with the federal Consumer Protection Financial Bureau. Other states are moving in this direction as well. This bill also closes a loophole on payday loans and clarifies a license required whether or not the company is in Washington. Many hours and lots of time have been spent in litigation regarding who's subject to these laws and it's the licensees who end up paying for this. Doesn't solve internet payday lending but attempts to make it fair.

CONCERNS: The attempt to level the playing field (in payday lending) is appreciated but there's still a problem with illegal/unlicensed offshore companies. Since the 8 loan cap was put into place, 200 legitimate businesses have gone under. The supply is down but the demand is not. This language still won't help the agency get at the offshore lenders.

Persons Testifying: PRO: Catherine Mele-Hetter, DFI.

CONCERNS: Trent Matson, Moneytree, Inc.