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**SUBSTITUTE HOUSE BILL 1405**

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**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** House Business & Financial Services (originally sponsored by Representatives Kirby, Kelley, Ladenburg, Darneille, Ryu, Stanford, and Jinkins)

READ FIRST TIME 02/10/11.

1            AN ACT Relating to loans made under the consumer loan act; amending  
2 RCW 31.04.027; and reenacting and amending RCW 31.04.025.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 31.04.025 and 2009 c 311 s 1 and 2009 c 120 s 3 are  
5 each reenacted and amended to read as follows:

6            (1) Each loan made to a resident of this state by a licensee, or  
7 persons subject to this chapter, is subject to the authority and  
8 restrictions of this chapter, unless such loan is made under the  
9 authority of chapter 63.14 RCW.

10            (2) This chapter does not apply to the following:

11            (a) Any person doing business under, and as permitted by, any law  
12 of this state or of the United States relating to banks, savings banks,  
13 trust companies, savings and loan or building and loan associations, or  
14 credit unions;

15            (b) Entities making loans under chapter 19.60 RCW (pawnbroking);

16            (c) Entities making loans under chapter 63.14 RCW (retail  
17 installment sales of goods and services);

18            (d) Entities making loans under chapter 31.45 RCW (check cashers  
19 and sellers);

1 (e) Any person making (~~loans~~) a loan primarily for business,  
2 commercial, or agricultural purposes(~~, or~~) unless the loan is secured  
3 by a lien on the borrower's primary residence;

4 (f) Any person making loans made to government or government  
5 agencies or instrumentalities(~~, or~~) or making loans to organizations as  
6 defined in the federal truth in lending act;

7 (~~(f)~~) (g) Entities making loans under chapter 43.185 RCW (housing  
8 trust fund);

9 (~~(g)~~) (h) Entities making loans under programs of the United  
10 States department of agriculture, department of housing and urban  
11 development, or other federal government program that provides funding  
12 or access to funding for single-family housing developments or grants  
13 to low-income individuals for the purchase or repair of single-family  
14 housing; (~~and~~

15 ~~(h)~~) (i) Nonprofit housing organizations making loans, or loans  
16 made, under housing programs that are funded in whole or in part by  
17 federal or state programs if the primary purpose of the programs is to  
18 assist low-income borrowers with purchasing or repairing housing or the  
19 development of housing for low-income Washington state residents; and

20 (j) Entities making loans which are not residential mortgage loans  
21 under a credit card plan.

22 (3) The director may, at his or her discretion, waive applicability  
23 of the consumer loan company licensing provisions of this chapter to  
24 other persons, not including individuals subject to the S.A.F.E. act,  
25 making loans when the director determines it necessary to facilitate  
26 commerce and protect consumers. The director may adopt rules  
27 interpreting this section.

28 **Sec. 2.** RCW 31.04.027 and 2001 c 81 s 3 are each amended to read  
29 as follows:

30 It is a violation of this chapter for a licensee, its officers,  
31 directors, employees, or independent contractors, or any other person  
32 subject to this chapter to:

33 (1) Directly or indirectly employ any scheme, device, or artifice  
34 to defraud or mislead any borrower, to defraud or mislead any lender,  
35 or to defraud or mislead any person;

36 (2) Directly or indirectly engage in any unfair or deceptive  
37 practice toward any person;

1 (3) Directly or indirectly obtain property by fraud or  
2 misrepresentation;

3 (4) Solicit or enter into a contract with a borrower that provides  
4 in substance that the consumer loan company may earn a fee or  
5 commission through the consumer loan company's best efforts to obtain  
6 a loan even though no loan is actually obtained for the borrower;

7 (5) Solicit, advertise, or enter into a contract for specific  
8 interest rates, points, or other financing terms unless the terms are  
9 actually available at the time of soliciting, advertising, or  
10 contracting;

11 (6) Fail to make disclosures to loan applicants as required by RCW  
12 31.04.102 and any other applicable state or federal law;

13 (7) Make, in any manner, any false or deceptive statement or  
14 representation with regard to the rates, points, or other financing  
15 terms or conditions for a residential mortgage loan or engage in bait  
16 and switch advertising;

17 (8) Negligently make any false statement or knowingly and willfully  
18 make any omission of material fact in connection with any reports filed  
19 with the department by a licensee or in connection with any  
20 investigation conducted by the department;

21 (9) Make any payment, directly or indirectly, to any appraiser of  
22 a property, for the purposes of influencing the independent judgment of  
23 the appraiser with respect to the value of the property; ((~~or~~))

24 (10) Accept from any borrower an execution of, or induce any  
25 borrower to execute, any instrument of conveyance to the lender of any  
26 ownership interest in the borrower's primary residence that is the  
27 security for the borrower's loan;

28 (11) Obtain at the time of closing a release of future damages for  
29 usury or other damages or penalties provided by law or a waiver of the  
30 provisions of this chapter; or

31 (12) Advertise any rate of interest without conspicuously  
32 disclosing the annual percentage rate implied by that rate of interest  
33 or otherwise fail to comply with any requirement of the truth in  
34 lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226,  
35 the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and  
36 regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act,  
37 15 U.S.C. Sec. 1691 and regulation B, Sec. 202.9, 202.11, and 202.12,

1 or any other applicable federal statute, as now or hereafter amended,  
2 in any advertising of residential mortgage loans or any other consumer  
3 loan company activity.

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