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**Business & Financial Services Committee**

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**HB 1326**

**Brief Description:** Addressing the consumer loan act.

**Sponsors:** Representatives Ryu and Kirby; by request of Department of Financial Institutions.

**Brief Summary of Bill**

- Provides remedies for a borrower when a person who is not licensed or exempt under the Consumer Loan Act (CLA) makes a transaction that is subject to the CLA.
- Provides the Director of the Department of Financial Institutions with additional enforcement authority.
- Modifies several definitions.

**Hearing Date:** 1/29/13

**Staff:** Jon Hedegard (786-7127).

**Background:**

No person may engage in the business of making secured or unsecured loans of money, credit, or things in action unless licensed by the Department of Financial Institutions (DFI) under the Consumer Loan Act (CLA) or exempt from licensing requirements. The following persons or entities must be licensed under the CLA:

- consumer loan companies;
- mortgage loan originators, including independent contractors;
- residential mortgage loan servicers (servicers) and;
- third-party residential mortgage loan modification servicers providers (third-party loan modifiers).

Exemptions from Licensure.

A number of specific entities and their employees are exempt from the CLA, including entities making retail installment loans under specific provisions of state law unless the goods being sold are prepaid debit cards that can be used anywhere a similarly branded debit card may be used.

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*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.*

The Director may waive the applicability of the CLA. The Director of the DFI (Director) may adopt rules regarding the applicability of the CLA.

#### Residential Mortgage Loan Servicers (Servicers).

No person may service residential mortgage loans without being licensed or exempt from licensing under the CLA. Licensing includes fees, background checks, and financial responsibility requirements. There are a number of specific duties for servicers. A servicer must provide a statement of account to a borrower within 15 days of a request. The servicer may charge a fee up to \$30 for providing the statement.

#### Third-Party Loan Modifiers.

A third-party loan modifier is a person who offers or performs residential mortgage loan modification services that is not the owner or servicer of the loan.

Third-party loan modifiers:

- must comply with all requirements for loan originators under the CLA;
- are limited to an advance fee of \$750; and
- may not charge total fees in excess of what is usual and customary or that are not unreasonable in light of the services provided.

#### Mortgage Lending under the CLA.

On July 30, 2008, President Bush signed House Resolution 3221 (P.L. 110-289). Title V of House Resolution 3221 is referred to as the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). Under the SAFE Act, all states must have a system of licensing in place for residential mortgage loan originators that meets national definitions and minimum standards, including licensing mortgage loan originators through a Nationwide Mortgage Licensing System and Registry (NMLS&R).

Applications for a CLA license must be made through the NMLS&R. An application for a license must include fingerprints and other specific background information.

The information and materials used for the NMLS&R are subject to existing state and federal privacy laws even after being provided to the NMLS&R. Information may be shared by the Director with other governmental agencies and regulatory associations without a loss of any privilege or confidentiality under the law.

#### Disclosure.

Within three days of the receipt of a loan application, a licensee must provide the borrower with a written disclosure and explanation of all costs and fees imposed in connection with obtaining the loan. Compliance with the federal Truth in Lending Act and the federal Real Estate Settlement Procedures Act constitutes compliance with the CLA.

#### Record-keeping.

Licensees must maintain financial records for at least 25 months.

#### Enforcement.

The Director may deny applications or renewals, suspend or revoke licenses, or levy fines for specified actions or failures to act by an applicant or licensee.

### Unfair Practices.

Licensees are prohibited from engaging in specified practices, including fraud, deception, failure to disclose, unfair business practices, and other acts that might adversely affect consumers or thwart the regulatory process.

Violations of the chapter that constitute unfair or deceptive acts or practices are violations of the Consumer Protection Act.

The Director of the DFI has authority to adopt rules to implement the CLA.

### **Summary of Bill:**

The definition of "borrower" is modified to include a person who consults with or retains a licensee or person subject to the CLA in an effort:

- to obtain a residential mortgage loan modification (modification): or
- to obtain information about a modification.

The definition of "simple interest method" is modified so that residential loan payments are applied as determined in the security instrument.

### Exemptions from Licensure.

The exemption for retail installment loans is modified to exempt the entities regulated under applicable state law unless credit is extended to purchase merchandise certificates, coupons, open or closed loop stored value, or other similar items issued and redeemable by a retail seller other than the retail seller extending the credit.

The burden of proving that federal preemption or an exemption or exception from regulation is applicable is upon the person asserting the preemption, exemption or exception.

### Unlicensed Transactions.

If a person makes a transaction that is not licensed or exempt from licensing under the CLA:

- any first-party fees charged in connection with the origination of the residential mortgage loan must be refunded to the borrower, excluding interest charges; and
- any fees or interest charged in the making of a nonresidential loan must be refunded to the borrower.

### Servicers.

A servicer may not charge a fee for providing information about a borrower's account to a borrower.

### Third-Party Loan Modifiers.

Third-party loan modifiers:

- must also comply with federal law; and
- must not receive advance fees.

### Disclosure.

The requirement that licensees must comply with specific federal advertising laws is replaced with a general requirement to comply with applicable state and federal laws.

Record-keeping.

Licensees must maintain financial records for at least three years.

Enforcement.

The Director may sanction a person for failing to obtain a required license. The Director may levy fines per violation. Failure to comply with annual assessment requirements may result in the loss of a license. The DFI must provide notice of the possible loss of license. The license is expired on the 15th day of delinquency after the notice is provided.

A number of technical corrections are made, including a change in name of the NMLS&R from Nationwide Mortgage Licensing System and Registry to Nationwide Multistate Licensing System and Registry.

**Appropriation:** None.

**Fiscal Note:** Available.

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