
Consumer Protection & Business Committee

HB 1874

Brief Description: Protecting consumers from predatory loans.

Sponsors: Representatives Walen, Robertson, Ryu, Morgan, Leavitt, Ortiz-Self, Ramel, Duerr, Ramos, Slatter, Reed, Ormsby, Timmons, Callan, Peterson, Street, Sandlin, Paul, Doglio, Thai, Wylie, Reeves and Hackney.

Brief Summary of Bill

- Provides the Department of Financial Institutions with additional enforcement authority under the Consumer Loan Act (Act).
- Expands the definition of "loan" under the Act.
- Makes loans made by an unlicensed person subject to the Act null, void, uncollectable, and unenforceable.

Hearing Date: 1/10/24

Staff: Megan Mulvihill (786-7304).

Background:

Consumer Loan Act.

The Consumer Loan Act (Act) authorizes the Department of Financial Institutions to regulate consumer loan companies who conduct business in Washington. Consumer loan companies include mortgage lenders and consumer finance companies. Under the Act, no person may engage in the business of making a secured or unsecured loan without a license, except for exempt entities. The Act limits the rates and fees lenders may charge on loans, restricts certain loan provisions such as prepayment penalties, requires lenders to fully disclose loan terms, and

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prohibits lenders from engaging in unfair and deceptive acts and practices.

Under the Act, loan means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions. A lender may charge:

- interest up to 25 percent per annum as determined by the simple interest method of calculating interest owed; and
- a nonrefundable, prepaid loan origination fee, not to exceed 4 percent of the first \$20,000 and 2 percent of the sum above \$20,000. The fee may be included in the principal balance of the loan.

Licenses 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 Act constitute unfair or deceptive acts or practices and are violations of the Consumer Protection Act. In addition, if an unlicensed person makes a loan, any fees or interest charged must be refunded to the borrower.

Summary of Bill:

The definition of loan is modified to mean "money or credit provided to a borrower in exchange for the borrower's agreement to a certain set of terms including, but not limited to, any finance charges, interest, or other charges, conditions, or considerations. A loan includes open-end and closed-end credit, and any transaction conducted via any medium whatsoever including, but not limited to, paper, facsimile, internet, or telephone. Any transaction that satisfies the definition of a "loan" is subject to the Act without regard to the lender's means of collection, whether the lender has legal recourse against the borrower in the event of nonrepayment, and whether the transaction carries required charges or payments."

The Act applies to loans made to persons physically located in the state, not just residents.

A person is prohibited from engaging in any device, subterfuge, or pretense to evade the Act, including:

- making loans disguised as personal property sale and leaseback transactions;
- disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services; or
- making, offering, assisting, or arranging a debtor to obtain a loan with a greater rate of interest, consideration, or charge than permitted through any method, including mail, telephone, internet, or any electronic means regardless of whether the person has a physical location in the state.

If a loan exceeds the rate permitted under the Act, a person is a lender making a loan subject to the Act, notwithstanding the fact that the person purports to act as an agent, service provider, or in another capacity for another person that is exempt from the Act, if:

- the person holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan; or

- the totality of the circumstances indicate that the person is the lender, and the transaction is structured to evade the Act.

It is a violation of the Act to engage in any device, subterfuge, or pretense to evade the requirements of the Act, including making, offering, or assisting a borrower to obtain a loan with a greater rate of interest, consideration, or charge than is permitted.

Except for residential mortgage loans, a loan made by a person violating the licensing requirement of the Act is null, void, uncollectable, and unenforceable.

Appropriation: None.

Fiscal Note: Requested on January 3, 2024.

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