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SENATE BILL 6471

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State of Washington                      60th Legislature                      2008 Regular Session

By Senators Weinstein, Kauffman, Tom, Fairley, McAuliffe, Kohl-  
Welles, Keiser, and Kline

Read first time 01/17/08.              Referred to Committee on Consumer  
Protection & Housing.

1            AN ACT Relating to protecting consumers by regulating loans under  
2 the consumer loan act and mortgage broker practices act; amending RCW  
3 31.04.025, 31.04.035, and 19.146.010; and repealing RCW 31.04.005.

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

5            **Sec. 1.** RCW 31.04.025 and 2001 c 81 s 2 are each amended to read  
6 as follows:

7            Each loan made to a resident of this state by a licensee is subject  
8 to the authority and restrictions of this chapter, unless such loan is  
9 made under the authority of (~~another license issued pursuant to a law  
10 of this state or under other authority of a law of this state~~) chapter  
11 63.14 RCW. This chapter shall not apply to any person doing business  
12 under and as permitted by any law of this state or of the United States  
13 relating to banks, savings banks, trust companies, savings and loan or  
14 building and loan associations, or credit unions, nor to any  
15 pawnbroking business lawfully transacted under and as permitted by any  
16 law of this state regulating pawnbrokers, nor to any loan of credit  
17 made pursuant to a credit card plan.

1       **Sec. 2.** RCW 31.04.035 and 1991 c 208 s 3 are each amended to read  
2 as follows:

3       No person may engage in the business of making secured or unsecured  
4 loans of money, credit, or things in action (~~at interest rates~~  
5 ~~authorized by this chapter~~) without first obtaining and maintaining a  
6 license in accordance with this chapter.

7       **Sec. 3.** RCW 19.146.010 and 2006 c 19 s 2 are each amended to read  
8 as follows:

9       Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11       (1) "Affiliate" means any person who directly or indirectly through  
12 one or more intermediaries, controls, or is controlled by, or is under  
13 common control with another person.

14       (2) "Application" means the same as in Regulation X, Real Estate  
15 Settlement Procedures, 24 C.F.R. Sec. 3500.

16       (3) "Borrower" means any person who consults with or retains a  
17 mortgage broker or loan originator in an effort to obtain or seek  
18 advice or information on obtaining or applying to obtain a residential  
19 mortgage loan for himself, herself, or persons including himself or  
20 herself, regardless of whether the person actually obtains such a loan.

21       (4) "Computer loan information systems" or "CLI system" means a  
22 real estate mortgage financing information system that facilitates the  
23 provision of information to consumers by a mortgage broker, loan  
24 originator, lender, real estate agent, or other person regarding  
25 interest rates and other loan terms available from different lenders.

26       (5) "Department" means the department of financial institutions.

27       (6) "Designated broker" means a natural person designated as the  
28 person responsible for activities of the licensed mortgage broker in  
29 conducting the business of a mortgage broker under this chapter and who  
30 meets the experience and examination requirements set forth in RCW  
31 19.146.210(1)(e).

32       (7) "Director" means the director of financial institutions.

33       (8) "Employee" means an individual who has an employment  
34 relationship with a mortgage broker, and the individual is treated as  
35 an employee by the mortgage broker for purposes of compliance with  
36 federal income tax laws.

1 (9) "Independent contractor" or "person who independently  
2 contracts" means any person that expressly or impliedly contracts to  
3 perform mortgage brokering services for another and that with respect  
4 to its manner or means of performing the services is not subject to the  
5 other's right of control, and that is not treated as an employee by the  
6 other for purposes of compliance with federal income tax laws.

7 (10) "Loan originator" means a natural person who (a) takes a  
8 residential mortgage loan application for a mortgage broker, or (b)  
9 offers or negotiates terms of a mortgage loan, for direct or indirect  
10 compensation or gain, or in the expectation of direct or indirect  
11 compensation or gain. "Loan originator" also includes a person who  
12 holds themselves out to the public as able to perform any of these  
13 activities. "Loan originator" does not mean persons performing purely  
14 administrative or clerical tasks for a mortgage broker. For the  
15 purposes of this subsection, "administrative or clerical tasks" means  
16 the receipt, collection, and distribution of information common for the  
17 processing of a loan in the mortgage industry and communication with a  
18 borrower to obtain information necessary for the processing of a loan.  
19 A person who holds himself or herself out to the public as able to  
20 obtain a loan is not performing administrative or clerical tasks.

21 (11) "Lock-in agreement" means an agreement with a borrower made by  
22 a mortgage broker or loan originator, in which the mortgage broker or  
23 loan originator agrees that, for a period of time, a specific interest  
24 rate or other financing terms will be the rate or terms at which it  
25 will make a loan available to that borrower.

26 (12) "Mortgage broker" means any person who for compensation or  
27 gain, or in the expectation of compensation or gain (a) (~~makes a~~  
28 ~~residential mortgage loan or~~) assists a person in obtaining or  
29 applying to obtain a residential mortgage loan or (b) holds himself or  
30 herself out as being able to (~~make a residential mortgage loan or~~)  
31 assist a person in obtaining or applying to obtain a residential  
32 mortgage loan.

33 (13) "Person" means a natural person, corporation, company, limited  
34 liability corporation, partnership, or association.

35 (14) "Principal" means any person who controls, directly or  
36 indirectly through one or more intermediaries, or alone or in concert  
37 with others, a ten percent or greater interest in a partnership,

1 company, association, or corporation, and the owner of a sole  
2 proprietorship.

3 (15) "Residential mortgage loan" means any loan primarily for  
4 personal, family, or household use secured by a mortgage or deed of  
5 trust on residential real estate upon which is constructed or intended  
6 to be constructed a single family dwelling or multiple family dwelling  
7 of four or less units.

8 (16) "Third-party provider" means any person other than a mortgage  
9 broker or lender who provides goods or services to the mortgage broker  
10 in connection with the preparation of the borrower's loan and includes,  
11 but is not limited to, credit reporting agencies, title companies,  
12 appraisers, structural and pest inspectors, or escrow companies.

13 NEW SECTION. **Sec. 4.** RCW 31.04.005 (Finding--Purpose) and 1991 c  
14 208 s 1 are each repealed.

15 NEW SECTION. **Sec. 5.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

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