

HOUSE BILL REPORT

SHB 1621

As Passed House:

March 9, 2009

Title: An act relating to regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008.

Brief Description: Regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008.

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Kirby, Bailey, Rodne, Nelson, Simpson and Moeller).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/3/09, 2/12/09 [DPS];

General Government Appropriations: 2/25/09 [DPS(FII)].

Floor Activity

Passed House: 3/9/09, 97-0.

Brief Summary of Substitute Bill

- Modifies licensing, education, and background check standards for consumer loan companies and mortgage loan originators.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Roach, Rodne, Santos and Simpson.

Staff: Jon Hedegard (786-7127)

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The substitute bill by Committee on Financial Institutions & Insurance be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives

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.

Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong, Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Serah Stetson (786-7109)

Background:

The Consumer Loan Act (CLA) authorizes the Department of Financial Institutions (DFI) to regulate consumer loan companies doing business in Washington. Consumer loan companies include mortgage lenders and consumer finance companies. Retail installment contracts are exempt from the CLA. The officers and principals for an applicant for a license under CLA must undergo a background check for criminal activities and any disciplinary activities related to a license. Licensees must maintain specific bond amounts using a base figure of \$100,000 and increasing the amount based in part on number of locations.

The DFI currently requires all consumer loan companies to file license applications through the Nationwide Mortgage Licensing System (NMLS). The NMLS was created in 2004 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The NMLS began operations in January of 2008. According to the NMLS, 42 states are current members or have signed a Statement of Intent regarding their participation in the NMLS.

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 of 2008 (SAFE Act). Under the SAFE Act, all states must have a system of licensing in place for residential mortgage loan originators by August 1, 2009, that meets national definitions and minimum standards, including:

- criminal history and credit background checks;
- pre-licensure education;
- pre-licensure testing;
- continuing education;
- net worth, surety bond or recovery fund; and
- licensing mortgage loan originators through a Nationwide Mortgage Licensing System and Registry (NMLS&R).

The Secretary of the U.S. Department of Housing and Urban Development is required to establish and maintain a backup licensing and registration system for loan originators operating in a state that:

- does not have a licensing and registering system for loan originators that meets the requirements of the SAFE Act; or
- does not participate in the NMLS&R.

Summary of Substitute Bill:

The 17 definitions in the chapter are struck. Twenty-five new definitions are created. Several of the new definitions are the same as, or a modified version of, the existing

definition. The definition of "loan originator" is struck. A new definition of "mortgage loan originator" is created.

The following persons or entities must also be licensed under the CLA:

- a mortgage loan originator, including an independent contractor; and
- consumer loan companies.

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 Director of the DFI (Director) may adopt rules regarding licensing.

Applicants must use a form prescribed by the Director. The Director may establish contracts with the NMLS&R to collect and maintain records and fees related to licensees.

The information required for a mortgage loan originator applicant is established. The process for submitting and issuing a license is established.

A mortgage loan originator license applicant must:

- complete minimum pre-licensing education requirements approved and administered by the NMLS&R; and
- pass a test developed by the NMLS&R and administered by a provider approved by the NMLS&R.

No license may be renewed without meeting minimum continuing education requirements approved and administered by the NMLS&R. The Director must establish other standards by rule for license renewal.

The Director must establish a process for licensees to challenge the information entered into the NMLS&R by the Director.

A CLA licensee must maintain a minimum bond amount of \$30,000. The bond amount may be greater depending on the dollar amount of loans originated by the licensee.

The information and materials used for the NMLS&R are subject to existing state and federal laws even after provided by 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.

Each mortgage loan originator is assigned a number that serves as a unique identifier. The unique identifier must be on all residential mortgage forms, advertising, and solicitations.

A licensee must provide the same disclosure required for a residential mortgage loan for any loan secured by a lien on real estate.

Specific entities and their employees are exempt from the CLA.

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

The Director may:

- contract for an array of legal and financial services to investigate, examine or audit a licensee;
- enter into agreements with other government officials and with regulatory organizations;
- accept or rely on investigations and examinations from other government officials;
- accept audit reports from independent certified public accountants; and
- assess a licensee for the costs of an examination, investigation or audit.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 10 through 14, relating to requiring certain persons to obtain a mortgage loan originator license, exempting others from the license requirements, and requiring the use of an application form prescribed by the Director; sections 16 through 19 and 21 through 24 relating to requiring applications, applicant information, prelicensure education, testing, and continuing education, and license issuance; sections 25 and 27 through 29 relating to allowing a process to challenge information in the NMLS&R, consumer loan company reporting to the NMLS&R and Director reporting to the NMLS&R, which take effect on July 1, 2010 and section 5, relating to requiring a background check and the use of NMLS&R for applications, which takes effect on January 1, 2010.

Staff Summary of Public Testimony (Financial Institutions & Insurance):

(In support) This bill is necessary due to a recent federal law. The Legislature must take action to ensure that we retain local regulation of consumer loan companies. Without this bill, the federal government will regulate Washington mortgage lenders. Loan originators could be regulated by the federal government if a bill is not passed. This is an I-960 bill but it is a bill that the entities paying the fees very much want to see passed. Industry wants to pay those fees and keep local oversight. This bill is a product of many discussions with the DFI. There are still a few technical issues and the industry will continue to work with the regulator to resolve those issues. This bill will level the field across industries within Washington and also across state lines. All people in the mortgage lending business will have similar standards. Today, mortgage brokers regulated under the Mortgage Broker Practices Act and lenders under the CLA have different standards. This bill and the other bill (House Bill 1749) make the requirements consistent for various licensees. The DFI was pleased that the industry and the DFI agree on many issues related to the need for this bill and House Bill 1749.

(In support with concerns) This is a good bill but there is one issue that should be addressed. In connection with education, one section says that the prelicensure education must be "approved and administered" by the NMLS&R. The word "administered" implies that the NMLS&R will actually provide the education. Contrast that section with the provision regarding the test requirements where the test is developed by the NMLS&R but administered by an approved provider.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) It is better to have the Department of Financial Institutions rather than the federal government regulate this segment of the industry because it would keep regulation under a single regulatory entity. This program is supported directly by fees paid by the industry and stakeholders support the fee for state regulation. If the fee amounts proposed exceed administrative and regulatory needs, they can be reduced in the future.

(Opposed) None.

Persons Testifying (Financial Institutions & Insurance): Representative Kirby, prime sponsor; Lisa Thatcher, Washington State Financial Services Association; Marty Lough, South Bay Mortgage Company and Washington Association of Mortgage Professionals; and Deb Bortner, Department of Financial Institutions.

(In support with concerns) Ken Perry, Broker Knowledge Group.

Persons Testifying (General Government Appropriations): (In support) Lisa Thatcher, Washington State Financial Services - Consumer Loan Companies; and Deborah Bortner, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying (Financial Institutions & Insurance):
None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations):
None.