

HOUSE BILL REPORT

HB 2255

As Reported by House Committee On: Business & Financial Services

Title: An act relating to making technical corrections, modernizing statutes, and streamlining enforcement authorities of nondepository institutions regulated by the department of financial institutions.

Brief Description: Concerning nondepository institutions regulated by the department of financial institutions.

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

Brief History:

Committee Activity:

Business & Financial Services: 1/17/12, 1/20/12, 1/23/12 [DPS].

Brief Summary of Substitute Bill

- Makes a number of changes related to the regulation of consumer loan companies, including adding prohibited practices.
- Makes a number of changes related to the regulation of check cashers and check sellers, including adding prohibited practices.
- Allows the Director of the Department of Financial Institutions (Director) to require several different types of licensees to use a multistate licensing system.
- Allows the Director to informally settle complaints and enforcement actions with several different types of licensees.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

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; Buys, Assistant Ranking Minority Member; Blake, Hudgins, Hurst, Parker, Rivers, Ryu and Stanford.

Staff: Jon Hedegard (786-7127).

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.

Background:

The Department of Financial Institutions (DFI) regulates a wide variety of professions and organizations. The Director of the DFI (Director) is appointed by the Governor.

Consumer Loan Companies.

Consumer loan companies are regulated and licensed under the Consumer Loan Act (CLA). A consumer loan company may make secured loans (including home loans) or unsecured loans. The CLA limits the rates and fees lenders may charge on loans, restricts certain loan provisions such as prepayment penalties, requires that lenders fully disclose the terms of loans, and prohibits lenders from engaging in unfair and deceptive acts and practices. Individuals who make residential loans under the CLA must be licensed as mortgage loan originators. No person or entity 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 exemptions under the CLA, including an exemption for entities making loans under the Retail Installment Sales Act (RISA). The Director may take a number of disciplinary and enforcements actions under the CLA. The Director may only issue a subpoena if the Director has required:

- attendance and examination under oath, and the licensee has not attended or testified;
or
- documents, and the licensee has not produced the required documents.

Check Cashers and Check Sellers.

The state regulates check cashers and sellers under the Check Cashers and Check Sellers Act (CCSA). A "check casher" is a person or entity that for compensation engages in the business of cashing checks, drafts, money orders, or other commercial paper. A "check seller" means a person or entity that for compensation engages in the business of selling checks, drafts, money orders, or other commercial paper. A licensed check casher or seller may only make a small loan (also known as a payday loan) if the check casher or seller has a small loan endorsement to their license.

The Director may issue a statement of charges to licensees or applicants for a license if, in the opinion of the Director, the licensee or applicant:

- is engaging, has engaged, or is about to engage in unsafe or unsound financial practices;
- is violating, has violated, or is about to violate the CCSA, including rules, orders, or subpoenas, or any condition imposed in writing by the Director or the Director's designee in connection with the granting of any application or other request by the licensee or any written agreement made with the Director;
- obtains a license by means of fraud, misrepresentation, concealment, or through mistake or inadvertence of the Director;
- provides false statements or omissions of material information on the application that, if known, would have allowed the Director to deny the application for the original license;
- fails to pay a fee required by the Director or maintain the required bond;

- commits a crime involving moral turpitude, financial misconduct, or dishonest dealings;
- knowingly commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person relying upon the word, representation, or conduct acts to his or her injury or damage;
- converts any money or its equivalent to his or her own use or to the use of his or her principal or of any other person;
- fails, upon demand, to disclose any information within his or her knowledge to the Director;
- fails, upon demand, to produce any document, book, or record in his or her possession for inspection of the Director;
- commits any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court, tribunal, agency, or administrative body of competent jurisdiction regarding that act is conclusive evidence; or
- commits an act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury and loss to the public.

The Director may ban any person from participating in the affairs of a licensee for a number of reasons. The Director of the DFI may impose sanctions against any:

- licensee;
- applicant; or
- director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

Mortgage Brokers.

The DFI licenses mortgage brokers and mortgage loan originators under the Mortgage Broker Practices Act (MBPA). The MBPA has provisions regarding licensing, continuing education, prohibited practices, examinations, investigations, and criminal, civil, and administrative penalties for mortgage brokers and loan originators.

Escrow Agents.

Escrow agents are regulated by the DFI under the Escrow Agent Registration Act (Escrow Act). The Escrow Act has provisions regarding licensing, prohibited practices, examinations, investigations, and penalties.

Money Transmitters.

The DFI regulates money services businesses (money transmitters and currency exchangers) under the Uniform Money Services Act (UMSA). Money transmission is the receipt of money for the purpose of transmitting or delivering the money to another location, whether inside or outside the United States. The transmission/delivery of the money can take place by any means, including wire, facsimile, or electronic transfer.

Currency exchange is the exchange of the money of one government for the money of another government, or holding oneself out as being able to complete such an exchange.

Various types of businesses are exempted from the definition. There are provisions in the USMA regarding licensing, prohibited practices, examinations, investigations, and penalties.

Mortgage Lending.

Mortgage lenders may fall into a number of regulatory categories, including:

- banks;
- credit unions;
- consumer loan companies; and
- mortgage bankers.

Banks and credit unions may be chartered with the state and are regulated by the state. They also may be regulated under a national charter. A bank or credit union may also seek to convert from a state to a national charter or vice versa.

Mortgage lenders must follow a number of state and federal laws, including laws that provide disclosure to borrowers and potential borrowers.

Summary of Substitute Bill:

Consumer Loan Companies.

Exemptions.

The RISA exemption in the CLA is amended to exclude the selling of a specific type of prepaid access.

An exemption from loan originator licensing is created for an individual who offers or negotiates a residential mortgage loan secured by the individual's residence.

Prohibited practices.

It is a prohibited practice to:

- fail to comply with other applicable state or federal laws or regulations; or
- make a loan from an unlicensed location.

Enforcement.

The Director may:

- order refunds to consumers harmed as a result of a violation of the CLA;
- ban any person from participating in the affairs of a licensee if the person violates statutory provisions regarding the disclosure of fees and costs to borrowers, reporting requirements and recordkeeping requirements, or mortgage loan originator licensing requirements;
- informally settle complaints and enforcement actions, including requiring payment to the DFI for the purposes of financial literacy and education; and
- issue a subpoena requiring attendance or the production of documents without a finding that the licensee has not attended or testified, or produced the required documents. A prior failure to attend or testify or produce documents is no longer required before a subpoena is issued.

Check Cashers and Check Sellers Act.

The definition of "licensee" is modified to specifically include a check casher or seller located in or outside of the State of Washington and those check cashers and sellers who should have a small loan endorsement.

The Director may:

- require licensees to obtain a license or transition an existing license using a multistate licensing system; and
- informally settle complaints and enforcement actions, including requiring payment to the DFI for the purposes of financial literacy and education.

It is a prohibited practice for a check casher or check seller to:

- sell a specific type of prepaid access in a retail installment loan under the RISA;
- advertise a statement that is false, misleading, deceptive, or that omits material information;
- fail to pay annual assessments by due date; or
- failure to pay other monies due the Director.

The Director may issue a statement of charges for:

- omitting material information on an application;
- knowingly or negligently omitting material information in an exam or investigation;
- failing to pay an assessment or failing to maintain the required bond; or
- violating any applicable federal or state law.

Mortgage Brokers.

The Director may informally settle complaints and enforcement actions, including requiring payment to the DFI for the purposes of financial literacy and education.

Escrow Agents.

The Director may:

- require licensees to obtain a license or transition an existing license using a multistate licensing system; and
- informally settle complaints and enforcement actions, including requiring payment to the DFI for the purposes of financial literacy and education.

Money Transmitters.

The Director may:

- require licensees to obtain a license or transition an existing license using a multistate licensing system; and
- informally settle complaints and enforcement actions, including requiring payment to the DFI for the purposes of financial literacy and education.

Mortgage Lending.

Disclosures that comply with the federal Real Estate Settlement Procedures Act are deemed to be compliant with disclosures required under state law.

Miscellaneous.

A number of other clarifying and language changes are made.

Substitute Bill Compared to Original Bill:

The reference to prepaid access is modified. Language is removed regarding the ability of the Director to issue a statement of charges against certain persons under the CCSA.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This is agency-request legislation. It streamlines and modernizes the DFI codes and clarifies long-arm jurisdiction. Many of the DFI licensees are licensed via a multistate portal. This has been a very efficient licensing method for those licensees. The federal government has the authority to require registration using a multistate portal in a number of areas. This will allow the DFI to provide one-stop shopping for the DFI licensees. The DFI has the authority to fine a person or entity or to revoke a license. There are times when a person or entity is willing to provide a different type of remedy for a violation. The changes in the bill allow for the possibility of alternative remedies. There is some gray area regarding the RISA exemptions and prepaid cards. The bill closes any possible loophole. The loan servicer changes bring the state into alignment with the federal law. Several years ago, the state adopted mortgage loan disclosure to provide certain information. Subsequently, the federal government required similar disclosures. The standard may require duplicative information. The state standards are aligned with the federal standards. Unlicensed payday lenders unfairly compete with state-licensed lenders. The unlicensed lenders ignore state laws. The DFI will take action against any unlicensed lender but the statutes are not as clear as they could be so the actions take more time from the DFI's Assistant Attorney General (AAG). The cost of the AAG time is paid for by the licensed lenders and this is not fair. The DFI worked with all of the licensees impacted by the bill. The Washington State Bar Association (WSBA) has some minor suggestions. The DFI is working with the WSBA on those issues.

(Neutral) This bill will help consumers. The changes to multistate licensing, the prepaid access, informal settlements, and the ability to better pursue persons or entities that violate the law outside of the state are all positive changes. The reason why there are so many unlicensed payday loans is because of the artificial restriction in the 2009 law. Payday lenders have gone out of business and closed locations. The legal loan volume has dropped while the illegal loan volume has risen. The DFI should have more authority to go after illegal lenders. The DFI worked on the issues with stakeholders in an open and collaborative manner. The bill is a good step forward.

(Opposed) None.

Persons Testifying: (In support) Deb Bortner, Department of Financial Institutions.

(Neutral) Trent Matson, Moneytree, Inc.

Persons Signed In To Testify But Not Testifying: None.