

SENATE BILL REPORT

SB 5207

As of February 5, 2013

Title: An act relating to making technical corrections and updating licensing and enforcement provisions of the consumer loan act.

Brief Description: Addressing the consumer loan act.

Sponsors: Senators Fain, Benton, Hobbs, Roach, Nelson, Mullet, Hatfield and Keiser; by request of Department of Financial Institutions.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/29/13.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

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.

Powers of a CLA Licensee. A CLA licensee may:

- lend money at a rate that does not exceed 25 percent per annum;
- charge a borrower a nonrefundable, prepaid loan origination fee limited to 4 percent of the first \$20,000 loaned and 2 percent of any amount above \$20,000. The fee may be included in the principal balance of the loan;
- agree with the borrower for the payment of fees to third parties other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan, and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser;
- in connection with a loan secured by real estate, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

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- charge and collect a penalty of not more than 10 percent of any installment payment delinquent ten days or more;
- collect fees and expenses related to a collection when a debt is referred to an attorney who is not a salaried employee of the licensee;
- make open-end loans as provided in the CLA;
- charge a fee for dishonored checks; and
- sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

An applicant for a license and any officers and principals of the applicant must undergo a background check. A licensee must maintain a surety bond or meet other specified financial requirements. The amount of the bond is based on the annual dollar amount of loans originated with a minimum amount of \$30,000.

There are a variety of prohibited practices under the CLA to ensure fair, honest, and open practices.

Summary of Bill: The CLA is updated; provisions of the CLA are modified to protect borrowers who obtain consumer loans; and the CLA is modernized to comply with changes made at the federal level.

For example, if a person must be licensed under the CLA but is not licensed, nonthird-party fees charged in connection with the origination of the residential mortgage loan must be refunded to the borrower, excluding interest charges. Fees or interest charged in the making of a nonresidential loan must be refunded to the borrower.

An exemption is eliminated that could allow payday lenders to use the CLA to make illegal short-term loans.

Borrower includes a person who consults with or retains a licensee for information about obtaining a residential mortgage loan modification, regardless of whether that person actually obtains a residential mortgage loan modification.

It is clarified that the term residential loan modification services only applies to those who perform such services for compensation or gain.

The burden of demonstrating whether a person is exempt from the CLA rests with the person claiming the exemption, exception, or preemption.

A CLA license expires upon the licensee's failure to comply with the annual assessment requirements. DFI must provide notice of the expiration to the address of record provided by the licensee. On the 15th day after DFI provides notice, if the assessment remains unpaid, the license expires. The licensee must receive notice prior to the expiration and have the opportunity to stop the expiration, as provided in rule.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: These changes to the CLA are mostly technical. The reference to closing a loophole to prevent illegal payday lending refers to some entities that would make a loan to a consumer and provide a closed loop store value card, like Safeway. The consumer then goes to the store, uses that card to get an open loop card, takes that card to the ATM, and gets out cash. The entity is charging fees so if they want to make a payday loan, they can be licensed under the payday statute. Some CLA regulations are inconsistent with federal law due to the frequent changes under Dodd-Frank. The language proposed takes care of that.

Persons Testifying: PRO: Deb Bortner, DFI; John Adams, citizen, Tom Echols, Consumer Loan Assn.