

FINAL BILL REPORT

SHB 1621

C 120 L 09
Synopsis as Enacted

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).

House Committee on Financial Institutions & Insurance
House Committee on General Government Appropriations
Senate Committee on Financial Institutions, Housing & Insurance

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;

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.

- 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:

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 privacy laws even after being provided to 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.

Votes on Final Passage:

House	97	0
Senate	41	3

Effective: July 26, 2009
January 1, 2010 (Section 5)
July 1, 2010 (Sections 10-14, 16-19, 21-25, and 27-29)