2012 Legislative Report

Washington State Department of Financial Institutions

SHB 2255 - Concerning Nondepository Institutions Regulated by the Department of Financial Institutions

Effective Date: June 7, 2012

This new law amends several statutes under the authority of the Department of Financial Institutions (DFI).

Consumer Loan Act - RCW 31.04

There is an exemption under the Consumer Loan Act for businesses conducting transactions covered by the Retail Installment Sales Act. The law amends the Consumer Loan Act to clarify that this exemption cannot be used if the transaction involves the sale of prepaid access devices. 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.

The new law gives the Director the authority to order refunds to consumers harmed as a result of a violation of CLA. It allows the Department to 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 a borrower, or if the person does not comply with reporting and recordkeeping requirements. The bill clarifies that the Director may informally settle complaints and enforcement actions, including requiring payment to DFI for the purposes of financial literacy and education.

Check Cashers and Sellers Act - RCW 31.45

The definition of licensee is clarified to specifically include a check casher or seller located in or outside the state of Washington. The new law clarifies that a licensee not only includes a check casher or seller who fails to obtain a license, but also a check casher or seller who fails to obtain a small loan endorsement. It is a prohibited practice for a check casher or check seller to sell prepaid access devices in a retail installment loan under the Retail Installment Sales Act; advertise a statement that is false, misleading, deceptive, or that omits material information; fail to pay annual assessments by due date; or fail 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. The law also states that the Director may require applicants for a license to obtain a license or transition an existing license using a multistate licensing system. The Director may informally settle complaints and enforcement actions including requiring

payment to the Department of Financial Institutions for the purposes of financial literacy and education.

Mortgage Brokers Practices Act - RCW 19.146

The new law provides that for mortgage brokers, the Director may informally settle complaints and enforcement actions, which may include requiring payment to DFI for the purposes of financial literacy and education.

Escrow Agents - RCW 18.44, and Uniform Money Services Act - RCW 19.230

The Director may require escrow agent licensees to obtain a license or transition an existing license using a multistate licensing system. The Director may informally settle complaints and enforcement actions which may include requiring payment to DFI for the purposes of financial literacy and education.

Mortgage Lending - RCW 19.144

Current law states that in addition to any other requirements under federal or state law, a residential mortgage loan may not be made unless a disclosure summary of all material terms, as adopted by DFI by rule, is placed on a separate sheet of paper and has been provided by a financial institution to the borrower within three business days following receipt of a loan application. The new law provides that disclosures that comply with the federal Real Estate Settlement Procedures Act are deemed to be compliant with disclosures required under state law.

SSB 5627: Service Member Civil Relief, Chapter 24, Laws of 2012

Effective Date: June 7, 2012

The new law amends the Washington Service Members' Civil Relief Act to make the Act apply to National Guard members who are under a call to service authorized by the Governor for a period of more than 30 consecutive days.

SB 5913: Public Funds/Credit Unions, Chapter 26, Laws of 2012

Effective Date: June 7, 2012

The new law allows credit unions to accept deposits of public funds up to the amount insured by the National Credit Union Share Insurance Fund ($250,000). Federally chartered credit unions are permitted to accept deposits of public funds as well. Credit unions are subject to the Public Deposit Protection Commission’s regulatory authority and reporting requirements when acting as a public depositary.

ESB 6141: Lifelong Learning Program, Chapter 33, Laws of 2012

Effective Date: June 7, 2012

Lifelong Learning Accounts are employee-owned educational savings accounts that help pay for an employee's education and training expenses. When a Lifelong Learning Account is set up, regular contributions by employees are matched by the employer. Lifelong Learning Accounts can supplement an employer's existing tuition assistance program or serve as an education benefit for employers who are not able to offer a tuition assistance program.

The new law establishes The Lifelong Learning Program at the Workforce Training and Education Coordinating Board (Board) to allow employees to create lifelong learning accounts. These accounts are joint savings accounts that are established by employees and employers to support the education and training of employees. The accounts are then used to assist the employee with their approved career development plan under the Lifelong Learning Program. The program is voluntary for employers and employees. The Board may partner with financial institutions and nonprofits to develop operating procedures, ensure adequate marketing, and coordinate career counseling services. The Board may work with financial institutions to encourage their full engagement in activities, such as management of accounts and the provision of financial literacy training.

SSB 6295: Exchange Facilitators, Chapter 34, Laws of 2012

Effective Date: June 7, 2012

The new law requires exchange facilitators to either maintain a fidelity bond for at least $1 million which covers the dishonest acts of employees and owners, or deposit all exchange funds in a qualified escrow account or qualified trust. The qualified escrow account or qualified trust requires the exchange facilitator and the client to independently authenticate a record of any withdrawal or transfer from the account or trust. Exchange facilitators must disclose on their websites and in their contracts regarding the bond requirement and the qualified escrow or qualified trust. They must also disclose any financial benefit they receive for recommending products or services to clients. If exchange facilitators fail to comply with the new law requirements this serves as prima facie evidence of intent to defraud with some exceptions. Attorneys' fees and treble damages may be awarded by the court. A legislative work group will study a regulatory or reporting framework for exchange facilitators in the summer of 2012.

2SHB 2452: Centralizing the authority and responsibility for the development, process, and oversight of state procurement of goods and services, Chapter 224, Laws of 2012

Effective Date: January 1, 2013.

Laws relating to the procurement of goods and services are reorganized and recodified into a new chapter in Title 39 RCW. The processes for procurement of personal services contracts, or services, are combined with the processes for procurement of goods.

The Director of the DES (Director) is responsible for the development and oversight of policy for the procurement of goods and services by all state agencies including standards for the use of credit cards; purchase of goods and services from Washington small businesses; microbusinesses and minibusineses; food procurement and food contracts; criteria for vehicle purchases; and implementation of an enterprise system for electronic procurement. The Director has the sole authority to enter into master contracts on behalf of the state. The Director also has the authority to delegate authorization to purchases goods and services to agencies. Such authorization must specify restrictions as to dollar amount or specific types of goods and services, based on a risk assessment process and does not exempt the agency from conformance to the policies established by the Director.

ESHB 2614, Assisting Homeowners in Crisis by Providing Alternatives, Remedies, and Assistance, Chapter 185, Laws of 2012

Effective Date: June 7, 2012, except Section 12 which is effective immediately regarding the allocation of funds

The new law provides that if a beneficiary agrees to a short sale of owner-occupied residential property, it must provide written notice to the seller, stating whether or not it will pursue the deficiency, the amount of the outstanding debt, the fact that the beneficiary may collect upon the debt for three years after releasing the interest, and that the seller has the ability to negotiate for a full release of the debt. If a court action is not pursued within three years of releasing its security interest, the beneficiary forfeits the right to collect upon the debt. Real estate licensees must notify sellers that a decision by any beneficiary to release its interest in the real property does not automatically relieve the seller of the obligation to pay any debt remaining at closing, including such fees such as the real estate licensee’s commission.

The law makes changes to the Foreclosure Fairness Act which became law in 2011. Under the new law a borrower may no longer be referred to mediation during the “meet and confer period.” A housing counselor or attorney assisting the borrower may refer the borrower to mediation any time after the borrower has received a notice of default, but no longer than 20 days after a notice of sale has been recorded. A mediation session must be held within 70 days, rather than 45 days, of the referral from the

Department of Commerce. The beneficiary and borrower must exchange required documents within a certain time, and changes are made regarding the information beneficiaries are required to provide the mediator. In addition, the immunity applicable to mediators who are employees or volunteers of a Dispute Resolution Centers is extended to all foreclosure mediators.

The time period between recording the notice of sale and the sale is extended from 90 days to 120 days for those borrowers who have received the letter under the meet and confer requirement. The quarterly reporting by beneficiaries to the Department of Commerce must include updated beneficiary contact information, and beneficiaries have up to 45 days from the end of each quarter to report. Also, a notice is provided to homeowners when the notice of trustee's sale is recorded that they have only 20 days to pursue mediation through a housing counselor or attorney.

A domestic limited liability corporation may be a trustee under the Deeds of Trust Act. Up to 11 days following the trustee's sale, the trustee, beneficiary, or authorized agent for the beneficiary may declare the trustee's sale and trustee's deed void for a number of reasons, including prior to the sale there was an agreement for a loan modification, forbearance plan, or other loss mitigation agreement to postpone or discontinue the trustee's sale. Under the new law, the trustee must refund the bid amount to the purchaser.

ESB 6155: Concerning Third Party Account Administrators, Chapter 56, Laws of 2012

Effective Date: June 7, 2012

The 15 percent cap on fees that a debt adjuster may charge a debtor is clarified to also cover all fees including, but not limited, to fees assessed by financial institutions and third-party account administrators. It is clarified that third-party account administrators are money transmitters and not debt adjusters. The Department of Financial Institutions is granted the authority to enforce this statutory cap on fees. Any person or entity providing debt adjusting services in this state shall provide the Department of Financial Institutions with specified information by September 1, 2012. The Department shall summarize the information received and submit a report to the Legislature by December 1, 2012.

Under the money transmitter statute, Third party account administrators (TPAAs) must follow specific requirements when working with debt adjusters. TPAAs must be licensed as money transmitters and comply with the following requirements from the federal Telemarketing Sales Rule: the debtor's funds must be held in an account at an insured financial institution; the debtor must own the funds in the account, as well as any interest that accrues; a third-party account administrator may not be owned or controlled by, or in any way affiliated with, a debt adjuster; a third-party account administrator may not give or accept compensation for referrals involving debt adjusters; and a debtor may

withdraw from the service without penalty and receive all funds in the account within seven business days.

TPAAs must keep certain records for five years and the books of TPAAs are open to inspection by the Department of Financial Institutions. Also, a contract between a TPAA and a debtor must disclose the rate and amount of all charges and fees and include a statement regarding the 15 percent cap law under the Debt Adjuster statute. Any violation of these requirements constitutes a per se violation of the Consumer Protection Act. In addition, an injured person may bring a civil action to recover $1,000 or actual damages, whichever is greater.

SB 6172: Revising Franchise Investment Protection Provisions, Chapter 112, Laws of 2012

Effective Date: June 7, 2012

This is a technical bill that amends various terms and adds new definitions. The term “disclosure document” is substituted for the term “offering circular.” The term “prospective franchisee” is substituted throughout the law for the term “offeree.” Definitions are provided for the terms “file”, “record”, and “prospective franchisee.” Specific deadlines are also amended. To qualify for an exception from registration, a franchisor must deliver a disclosure document to the prospective franchisee 14 calendar days prior to execution of the agreement. The Department of Financial Institution’s guidelines for preparation of the disclosure document must be based on guidelines of either Federal Trade Commission or the North American Securities Administrators Association.

A franchisor may renew the registration by filing an application 20 calendar days before expiration of the registration. A franchisor must furnish a prospective franchisee with a copy of the disclosure document at least 14 calendar days prior to payment or execution of a binding agreement. It is unlawful for the franchisor to unilaterally and materially alter the terms and conditions of a franchise agreement without furnishing the prospective franchisee with a copy of the revisions at least seven calendar days before he or she signs the agreement. Changes that arise out of negotiations initiated by the prospective franchisee do not trigger this period. A person has 20 calendar days to request a hearing on a stop order or a cease and desist order.

SB 6218: Escrow Licensing, Chapter 124, Laws of 2012

Effective Date: June 7, 2012

The new law clarifies the exemption from escrow agent licensure for attorneys practicing law. A person licensed to practice law in Washington is exempt from the escrow licensing requirements if all escrow transactions are performed by the attorney while engaged in the practice of law; or by an employee of the law practice under direct supervision of the attorney while engaged in the practice of law. In addition all escrow

transactions must be performed under a legal entity publicly identified and operated as a law practice; and all escrow funds are deposited into, maintained in, and disbursed from a trust account in compliance with the state supreme court's rules governing the conduct of lawyers.

SSB 6354, Requiring State Agencies to Offer Electronic Filing for Business Forms, Chapter 127, Laws of 2012

Effective Date: June 7, 2012

A state agency that requires a business to submit a document, form, or payment in paper format must, with limited exceptions, provide the business with an option to submit such materials electronically. Unless otherwise obligated, a business may authorize a second party to submit such filing requirements on its behalf. Exceptions to the electronic filing requirement apply where there is a legal requirement for materials to be submitted in paper format, or when it is not technically or fiscally feasible or practical, or in the best interest of businesses for such materials to be submitted electronically. If applicable, the director of an agency or the director's designee must, within existing resources, establish and maintain a process to notify the public as to what materials have been exempt from electronic filing. Agencies must add the capability for electronic submissions of existing documents, forms, and fees as part of their normal operations. In addition, any new documents, forms, or fees required of a business must be capable of electronic submission within a reasonable time following either their creation or the implementation of the new requirement. Agencies must document how they plan to transition from paper to electronic forms.

SSB 6566, Adjusting When a Judgment Lien on Real Property Commences, Chapter 133, Laws of 2012

Effective Date: June 7, 2012

The bill clarifies that the lien of judgments of real estate of the judgment debtor begins, for judgments of the superior court for the county in which the real estate is situated, from the time of the filing by the county clerk upon the execution docket in accordance with RCW 4.64.030.

ESB 6635, Improving revenue and budget sustainability by repealing, modifying, or revising tax preference and license fees, 2nd Special Session, Laws of 2012

Effective date: July 1, 2012.

Among other changes revising current tax preferences, the bill states that a financial business that is located in more than ten states may not deduct from B&O tax amounts received from interest earnings on loans secured by first mortgages or deeds of trust on

residential properties. The Joint Legislative Audit and Review Committee will review the first mortgage deduction by June 30, 2015, as part of its tax preference review process.