



Synopsis of House Committee Amendments^{*}

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Legislative Service Commission

Sub. S.B. 185

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(H. Financial Institutions, Real Estate and Securities)

Removes the Senate passed changes to the Consumer Sales Practices Act (CSPA), restores that law to current law and establishes new consumer protections relative to certain mortgage loans separate and apart from the CSPA, but specifies that a consumer who is harmed by a violation of the new protections is subject to all the rights, actions, and remedies available under the CSPA.

Creates a separate definition of "consumer transaction" to mean and specifically apply to a loan transaction between a loan officer, mortgage broker, or nonbank mortgage lender and their customers and adds a twenty-one point definition for an unfair or deceptive act or practice which applies only to loan officers, mortgage brokers and nonbank mortgage lenders, and authorizes the Superintendent of Financial Institutions to adopt rules to further define the practices that violate the list of unfair or deceptive acts or practices.

Prohibits prepayment penalties or fees on home loans, for personal, family or household purposes secured by a first mortgage, made by a nonbank mortgage lender in which the principal amount is \$150,000 or less, but permits prepayment penalties of 2% in the first year and 1% in the second year on loans of a greater amount, and limits the prepayment penalty for second mortgages by decreasing the time during which a penalty may be charged from 3 to 2 years, with a 2% limit the first year and a 1% limit the second year.

Alters the existing definition of "covered loan" in the Consumer Credit Mortgage Loan Law (covers certain "high cost" mortgage loans in conformity with recent federal law) to reduce the amount of fees that would be included in a loan as a covered loan from the greater of 8% of the loan amount or \$528 to the greater of 5% of the loan amount or \$528, and specifies that the \$528 standard is to be updated annually based on the Consumer Price Index.

^{*} This synopsis does not address amendments that may have been adopted on the House floor.

Removes from current law a provision that prohibits a creditor from replacing or consolidating a zero interest rate or other low rate loan made by a governmental or nonprofit lender with a covered loan.

Prohibits, in connection with a consumer home loan, the financing of various types of credit, life, disability, or job loss insurance, although premiums paid on a monthly basis may not be considered financed by the lender, and prohibits "flipping," defined as making a consumer home loan to refinance an existing consumer home loan when the new loan does not have a reasonable, tangible net benefit to the borrower.

Removes the qualifier "actual" in reference to damages recoverable under the CSPA and returns the language from the proposed mandatory to the existing permissive in reference to the awarding of attorney fees to the prevailing party if the consumer brought or maintained an action that is groundless and filed or maintained in bad faith.

Removes the Senate-proposed provision that allows a claim for defense of rescission by a consumer to be asserted by the Attorney General or any consumer against an assignee or purchaser of a mortgage loan or value if the assignee is a specified financial institution, and does not exempt a claim or defense of rescission from the options available to a consumer as is done to the CSPA in the Senate-passed version.

Modifies the proposed list of prohibited actions by a mortgage broker or loan officer to prohibit any person from knowingly "bribing, coercing, or extorting" for the purpose of corrupting or improperly influencing the independent judgment of an appraisal certificate holder or licensee with respect to the value of the dwelling offered as a security for repayment of a mortgage loan.

Requires any person who applies for a mortgage broker certificate or loan officer license on or after January 1, 2007, to meet specified qualifying education requirements.

Creates the Consumer Financial Education Board in the Department of Commerce that will, among other things, create a pilot financial literacy and counseling program funded through the Department's Consumer Finance Fund to be operated in the five counties with the greatest foreclosure rates to be mandatory for consumers seeking a mortgage loan with origination fees of greater than 5%, and create a pilot financial literacy education curriculum for elementary and high school students.

Requires a registrant to deliver "immediately" a copy of any credit score and report obtained regarding the buyer by the registrant for the purpose of the mortgage loan application, and any automated valuation model the loan officer or registrant may have used and requires that the mortgage loan origination disclosure statement (MLODS) indicates whether insurance will be escrowed.

Requires mortgage brokers and loan officers to timely inform buyers if any fees payable to the broker or lender increase by more than 10% or \$100, whichever is greater, rather than, as proposed, by the Senate-passed version, requiring mortgage brokers and



loan officers to timely inform buyers if the estimated cash out available to the buyer changes by more than 10%.

Removes the Senate-proposed prohibition against referring a buyer to a specific title insurance company, and permits a mortgage broker to refer a buyer to any settlement service provider, including any title insurance company if the broker provides for the buyer a written notice disclosing any business relationship or ownership interest, and removes the proposed prohibitions against a mortgage broker or any member of the mortgage broker's family having ownership interest in a title insurance company.

Authorizes the Superintendent of Financial Institutions to, without a hearing, require a registrant or licensee, or an applicant, in lieu of school transcripts, to provide a written statement that the person has met the pre-license education requirements, and conduct an unannounced investigation of qualifying education transcripts.

Requires that mortgage broker and loan officer registration or license applicants to maintain transcripts substantiating successful completion of the pre-license education for five years.

Requires the Superintendent to suspend the certificate of registration or license of a registrant or licensee who fails to meet the continuing education requirements of the Mortgage Broker/Loan Officer Law.

Removes the Senate-proposed general fiduciary requirements imposed upon mortgage brokers and loan officers and requires a fiduciary duty only with respect to any funds received from or by a mortgage broker or loan officer on behalf of the buyer, and requires such persons to secure a loan that is reasonably advantageous to the buyer and present to the buyer every option if the buyer is approved for more than one loan product by more than one lender.

Removes from existing law the designation of "privileged" in reference to information arising from or leading to an investigation or examination, and refers to such information as only "confidential."

Prohibits confidential information from being included in the proposed electronic database containing information on certain enforcement actions taken by the Superintendent and the Attorney General.

Requires licensed real estate appraisers to provide a copy of their appraisal to a mortgage applicant as well as a copy of the current real property appraisal done by the county auditor.

Requires a mortgage broker to deliver to the buyer, with the MLODS, a "good faith estimate" that meets the requirements of the Federal Real Estate Settlement Procedures Act as well as a notice to the buyer describing the relationship between the mortgage broker and buyer and the termination terms of the agreement.

Requires title insurance agents, when issuing lender's title insurance, to notify buyers of the availability of owner's title insurance in conjunction with a residential mortgage loan, requires title insurance agents or any subcontractor performing a title search, to maintain an errors and omission policy that includes coverage for the agent's delegation of any function and requires the Superintendent to establish minimum limits for that coverage, and requires title insurance companies to issue closing or settlement protection to the lender, borrower and seller of the property, and to any applicant for title insurance unless the person signs a written document declining the protection.

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