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HOUSE BILL 3087

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State of Washington

56th Legislature

2000 Regular Session

By Representative Sullivan

Read first time 01/28/2000. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to legalized loan sharks; and amending RCW  
2 31.45.010, 31.45.030, 31.45.073, and 31.45.077.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 31.45.010 and 1995 c 18 s 1 are each amended to read  
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout this chapter.

8 (1) (~~("Check-casher")~~) (a) "Legalized loan shark" means an  
9 individual, partnership, unincorporated association, or corporation  
10 that, for compensation, engages, in whole or in part, in the business  
11 of cashing checks, drafts, money orders, or other commercial paper  
12 serving the same purpose.

13 (~~((2) "Check-seller")~~) (b) "Legalized loan shark" also means an  
14 individual, partnership, unincorporated association, or corporation  
15 that, for compensation, engages, in whole or in part, in the business  
16 of or selling checks, drafts, money orders, or other commercial paper  
17 serving the same purpose.

18 (~~((3))~~) (2) "Licensee" means a (~~(check-casher-or-seller)~~) legalized  
19 loan shark licensed by the director to engage in business in accordance

1 with this chapter. For purposes of the enforcement powers of this  
2 chapter, including the power to issue cease and desist orders under RCW  
3 31.45.110, "licensee" also means a (~~(check-casher or seller)~~) legalized  
4 loan shark who fails to obtain the license required by this chapter.

5 (~~(4)~~) (3) "Small loan" means a loan of up to five hundred dollars  
6 for a period of thirty-one days or less.

7 (~~(5)~~) (4) "Director" means the director of financial  
8 institutions.

9 **Sec. 2.** RCW 31.45.030 and 1995 c 18 s 4 are each amended to read  
10 as follows:

11 (1) Except as provided in RCW 31.45.020, no (~~(check-casher or~~  
12 ~~seller)~~) legalized loan shark may engage in business without first  
13 obtaining a license from the director in accordance with this chapter.  
14 A license is required for each location where a licensee engages in the  
15 business of cashing or selling checks or drafts.

16 (2) Each application for a license shall be in writing in a form  
17 prescribed by the director and shall contain the following information:

18 (a) The legal name, residence, and business address of the  
19 applicant and, if the applicant is a partnership, association, or  
20 corporation, of every member, officer, and director thereof;

21 (b) The location where the initial registered office of the  
22 applicant will be located in this state;

23 (c) The complete address of any other locations at which the  
24 applicant proposes to engage in business as a (~~(check-casher or~~  
25 ~~seller)~~) legalized loan shark;

26 (d) Such other data, financial statements, and pertinent  
27 information as the director may require with respect to the applicant,  
28 its directors, trustees, officers, members, or agents.

29 (3) Any information in the application regarding the personal  
30 residential address or telephone number of the applicant is exempt from  
31 the public records disclosure requirements of chapter 42.17 RCW.

32 (4) The application shall be filed together with an investigation  
33 and supervision fee established by rule by the director. Such fees  
34 collected shall be deposited to the credit of the banking examination  
35 fund in accordance with RCW 43.320.110.

36 (5)(a) Before granting a license to sell checks, drafts, or money  
37 orders under this chapter, the director shall require that the licensee  
38 file with the director a surety bond running to the state of

1 Washington, which bond shall be issued by a surety insurer which meets  
2 the requirements of chapter 48.28 RCW, and be in a format acceptable to  
3 the director. The director shall adopt rules to determine the penal  
4 sum of the bond that shall be filed by each licensee. The bond shall  
5 be conditioned upon the licensee paying all persons who purchase  
6 checks, drafts, or money orders from the licensee the face value of any  
7 check, draft, or money order which is dishonored by the drawee bank,  
8 savings bank, or savings and loan association due to insufficient funds  
9 or by reason of the account having been closed. The bond shall only be  
10 liable for the face value of the dishonored check, draft, or money  
11 order, and shall not be liable for any interest or consequential  
12 damages.

13 (b) Before granting a small loan endorsement under this chapter,  
14 the director shall require that the licensee file with the director a  
15 surety bond, in a format acceptable to the director, issued by a surety  
16 insurer that meets the requirements of chapter 48.28 RCW. The director  
17 shall adopt rules to determine the penal sum of the bond that shall be  
18 filed by each licensee. A licensee who wishes to engage in both check  
19 selling and making small loans may combine the penal sums of the  
20 bonding requirements and file one bond in a form acceptable to the  
21 director. The bond shall run to the state of Washington as obligee,  
22 and shall run to the benefit of the state and any person or persons who  
23 suffer loss by reason of the licensee's violation of this chapter or  
24 any rules adopted under this chapter. The bond shall only be liable  
25 for damages suffered by borrowers as a result of the licensee's  
26 violation of this chapter or rules adopted under this chapter, and  
27 shall not be liable for any interest or consequential damages.

28 (c) The bond shall be continuous and may be canceled by the surety  
29 upon the surety giving written notice to the director and licensee of  
30 its intent to cancel the bond. The cancellation is effective thirty  
31 days after the notice is received by the director. Whether or not the  
32 bond is renewed, continued, reinstated, reissued, or otherwise  
33 extended, replaced, or modified, including increases or decreases in  
34 the penal sum, it shall be considered one continuous obligation, and  
35 the surety upon the bond shall not be liable in an aggregate or  
36 cumulative amount exceeding the penal sum set forth on the face of the  
37 bond. In no event shall the penal sum, or any portion thereof, at two  
38 or more points in time be added together in determining the surety's  
39 liability. The bond shall not be liable for any liability of the

1 licensee for tortious acts, whether or not such liability is imposed by  
2 statute or common law, or is imposed by contract. The bond shall not  
3 be a substitute or supplement to any liability or other insurance  
4 required by law or by the contract. If the surety desires to make  
5 payment without awaiting court action against it, the penal sum of the  
6 bond shall be reduced to the extent of any payment made by the surety  
7 in good faith under the bond.

8 (d) Any person who is a purchaser of a check, draft, or money order  
9 from the licensee having a claim against the licensee for the dishonor  
10 of any check, draft, or money order by the drawee bank, savings bank,  
11 or savings and loan association due to insufficient funds or by reason  
12 of the account having been closed, or who obtained a small loan from  
13 the licensee and was damaged by the licensee's violation of this  
14 chapter or rules adopted under this chapter, may bring suit upon such  
15 bond or deposit in the superior court of the county in which the check,  
16 draft, or money order was purchased, or in the superior court of a  
17 county in which the licensee maintains a place of business.  
18 Jurisdiction shall be exclusively in the superior court. Any such  
19 action must be brought not later than one year after the dishonor of  
20 the check, draft, or money order on which the claim is based. In the  
21 event valid claims against a bond or deposit exceed the amount of the  
22 bond or deposit, each claimant shall only be entitled to a pro rata  
23 amount, based on the amount of the claim as it is valid against the  
24 bond, or deposit, without regard to the date of filing of any claim or  
25 action.

26 (e) In lieu of the surety bond required by this section, the  
27 applicant for a (~~check-seller~~) legalized loan shark license may file  
28 with the director a deposit consisting of cash or other security  
29 acceptable to the director in an amount equal to the penal sum of the  
30 required bond. In lieu of the surety bond required by this section,  
31 the applicant for a small loan endorsement may file with the director  
32 a deposit consisting of cash or other security acceptable to the  
33 director in an amount equal to the penal sum of the required bond, or  
34 may demonstrate to the director net worth in excess of three times the  
35 amount of the penal sum of the required bond.

36 The director may adopt rules necessary for the proper  
37 administration of the security or to establish reporting requirements  
38 to ensure that the net worth requirements continue to be met. A  
39 deposit given instead of the bond required by this section is not an

1 asset of the licensee for the purpose of complying with the liquid  
2 asset provisions of this chapter. A deposit given instead of the bond  
3 required by this section is a fund held in trust for the benefit of  
4 eligible claimants under this section and is not an asset of the estate  
5 of any licensee that seeks protection voluntarily or involuntarily  
6 under the bankruptcy laws of the United States.

7 (f) Such security may be sold by the director at public auction if  
8 it becomes necessary to satisfy the requirements of this chapter.  
9 Notice of the sale shall be served upon the licensee who placed the  
10 security personally or by mail. If notice is served by mail, service  
11 shall be addressed to the licensee at its address as it appears in the  
12 records of the director. Bearer bonds of the United States or the  
13 state of Washington without a prevailing market price must be sold at  
14 public auction. Such bonds having a prevailing market price may be  
15 sold at private sale not lower than the prevailing market price. Upon  
16 any sale, any surplus above amounts due shall be returned to the  
17 licensee, and the licensee shall deposit with the director additional  
18 security sufficient to meet the amount required by the director. A  
19 deposit given instead of the bond required by this section shall not be  
20 deemed an asset of the licensee for the purpose of complying with the  
21 liquid asset provisions of this chapter.

22 **Sec. 3.** RCW 31.45.073 and 1995 c 18 s 2 are each amended to read  
23 as follows:

24 (1) No licensee may engage in the business of making small loans  
25 without first obtaining a small loan endorsement to its license from  
26 the director in accordance with this chapter. An endorsement will be  
27 required for each location where a licensee engages in the business of  
28 making small loans, but a small loan endorsement may authorize a  
29 licensee to make small loans at a location different than the licensed  
30 locations where it cashes or sells checks or drafts. A licensee may  
31 have more than one endorsement.

32 (2) A licensee that has obtained the required small loan  
33 endorsement may charge interest or fees for small loans not to exceed  
34 in the aggregate fifteen percent of the principal amount borrowed. The  
35 director may determine by rule which fees, if any, are not subject to  
36 the fifteen percent limitation.

37 (3) In connection with making a small loan, a licensee may advance  
38 moneys on the security of a postdated check or draft provided the time

1 period between the date the loan is granted and the date of the  
2 postdated check does not exceed thirty-one days. A licensee shall  
3 deposit all postdated checks or drafts as soon as practicable after the  
4 date of the check or draft has passed.

5 (4) No person may at any time cash or advance any moneys on a  
6 postdated check or draft in excess of the amount of goods or services  
7 purchased without first obtaining a small loan endorsement to a ((~~check~~  
8 ~~easher or check seller~~)) legalized loan shark license.

9 **Sec. 4.** RCW 31.45.077 and 1995 c 18 s 3 are each amended to read  
10 as follows:

11 (1) Each application for a small loan endorsement to a ((~~check~~  
12 ~~easher or check seller~~)) legalized loan shark license must be in  
13 writing and in a form prescribed by the director and shall contain the  
14 following information:

15 (a) The legal name, residence, and business address of the  
16 applicant, and if the applicant is a partnership, corporation, or  
17 association, the name and address of every member, partner, officer,  
18 and director thereof;

19 (b) The street and mailing address of each location where the  
20 licensee will engage in the business of making small loans;

21 (c) A surety bond, or other security allowed under RCW 31.45.030,  
22 in the amount required; and

23 (d) Any other pertinent information, including financial  
24 statements, as the director may require with respect to the licensee  
25 and its directors, officers, trustees, members, or employees.

26 (2) Any information in the application regarding the licensee's  
27 personal residential address or telephone number is exempt from the  
28 public records disclosure requirements of chapter 42.17 RCW.

29 (3) The application shall be filed together with an investigation  
30 and supervision fee established by rule by the director. Fees  
31 collected shall be deposited to the credit of the banking examination  
32 fund in accordance with RCW 43.320.110.

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