HOUSE BILL REPORT
SHB 1340

As Passed House:
February 12, 2003

Title: An act relating to check cashers and sellers.

Brief Description: Regulating check cashers and sellers.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Cooper, Benson, Schual-Berke and McIntire; by request of Governor Locke).

Brief History:
Committee Activity:
Financial Institutions & Insurance: 1/31/03, 2/4/03 [DPS].
Floor Activity:
Passed House: 2/12/03, 97-0.

Brief Summary of Substitute Bill

- Creates a comprehensive statutory scheme for the regulation of payday loans that includes consumer protection provisions, interest limits, and rescission rights.
- Enhances the regulatory authority of the Department of Financial Institutions via expanded licensing requirements and enforcement provisions.
- Requires payday lenders to make specified disclosures to borrowers which must be in compliance with federal law, including the Truth-in-Lending Act.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Hunter, Roach and Santos.

Staff: Thamas Osborn (786-7129).

Background:

Payday loans: The business of check cashing and selling is regulated by the Department of Financial Institutions (DFI) pursuant to the Check Cashers and Sellers Act (Act). One of the common practices of such businesses is the issuance of what have become known as payday loans.– The term payday loan– refers to a type of short-term, high interest, unsecured loan that is typically offered to consumers by a business outlet offering check cashing services. The recipients of such loans are often low-income persons without access to other types of credit. In a typical payday loan transaction, the consumer writes the lender a *post dated*check and, in return, the lender provides a lesser amount of cash to the consumer after subtracting interest and fees. Following this initial transaction, the lender holds the check for a specified period, during which the consumer has the option of either redeeming the check by paying the face amount to the lender or allowing the lender to cash the check after the loan period has expired. Such loans have come to be called "payday loans" since consumers have tended to obtain them as a form of cash advance on a forthcoming paycheck.

Some consumer advocates are critical of payday loans, insofar as they involve an extraordinarily high *annual percentage rate* (APR) and tend to be obtained by low-income persons who are poorly situated to pay such interest. Though the loans are very short-term (i.e., 31 days or less) and are subject to no more than 15 percent simple interest, the typical interest rate is generally in the triple digits when such interest is calculated as an APR. Furthermore, some individuals who frequently use payday loans find themselves in a cycle of debt that is hard to escape.

Check Cashers and Sellers Act: Payday lending practices are subject to limited regulation under the Check Cashers and Sellers Act, Chapter 31.45 RCW (Act). The Act contains provisions for the licensing and regulation of businesses offering services related to check cashing and the selling of money orders, drafts, checks, and other commercial paper. Though the Act does not attempt to comprehensively regulate payday lending practices, it does provide for some regulation of licensees who are specially authorized to issue small loans. Such loans are subject to three key limitations:

- the loan amount may not exceed $500;

- the interest rate and fees, in the aggregate, may not exceed 15 percent of the principal loan amount; and

- the loan period may not exceed 31 days.

Summary of Substitute Bill:

Regulatory scheme: The bill creates a comprehensive statutory scheme for the regulation of the payday loan industry that includes many consumer protection provisions. In addition, the regulatory authority of the DFI is greatly enhanced via expanded licensing requirements and enforcement provisions.

Term of loan: The maximum term of a payday loan is 45 days. This term can be extended pursuant to an agreement between the borrower and lender, provided no additional interest or fees are imposed.

Maximum balance: The maximum balance that may be owed by a borrower to a lender on one or more loans cannot, in the aggregate, exceed $700.

Interest rate: For one or more loans that amount, in the aggregate, to more than $500, interest is limited to a maximum of 10 percent. For amounts below $500, the interest rate remains at 15 percent.

Collateral: Collateral is limited to one post-dated check per loan. No other form of collateral is allowed.

Default: In the event of a default by a borrower, the following restrictions apply:

- the lender may only charge a one time fee to the borrower, as determined by the DFI rule;
- the lender may take civil action, but can only recover the principle and collection costs; and
- the lender is prohibited from threatening the borrower with criminal prosecution as part of its collection effort.

Payment plan: After four successive loans and prior to default on the last loan, a borrower is entitled to convert his or her loans into a payment plan with the lender. Such payment plans are subject to the following conditions:

- a written agreement is required;
- the agreement must allow the buyer not less than 60 days to pay off the loans; and
- the borrower must be allowed to pay off the loan in at least three payments.

Rescission: A borrower has the right to rescind the loan within one business day of its inception. Rescission is effected by the borrower returning the principle to the lender.

Disclosures: The lender is required to make specified disclosures to prospective borrowers and must comply with federal laws, including the Truth-in-Lending Act (TILA). Advertisements must also comply with federal law and “ where they include an advertised interest rate “ the APR must be disclosed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect ninety days after adjournment of session in which bill is passed; Section 12 of the bill takes effect October 1, 2003.

Testimony For: The bill is the product of a task force comprised of state regulators, industry representatives, and consumer advocates. Increased regulation of payday lenders is necessary in order to protect consumers and to address the problem of the cycle of debt experienced by some borrowers. This is an innovative, model bill that will enable consumers to escape the cycle of debt. It creates a regulatory scheme that the department needs to properly regulate the industry and protect consumers. Payday loans have a niche within the industry, and are used heavily by the young and the elderly. For many, they are a useful source of cash for those who have a short-term need. Typically, borrowers are persons with middle class incomes. Currently, the biggest problem with payday loans is that some individuals obtain simultaneous multiple loans and thus get overextended.

Testimony Against: None.

(With concerns) The interest rates allowed under the bill are too high and constitute usury. Also, the maximum loan term allowed under the bill is too long. Current law should remain as is with respect to interest rates and loan duration.

Testified: (In support) Representative Cooper, prime sponsor; Mark Thomson, Department of Financial Institutions; Geoff Baker, Department of Financial Institutions; Dennis Bassford, Moneytree, Inc.; and Warren Bishop, citizen.

(With concerns) Gene Forrester, Washington Senior Lobby.