HOUSE BILL REPORT
HB 2852

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to small loans made by unlicensed check cashers and sellers.

Brief Description: Regulating small loans made by unlicensed check cashers and sellers.

Sponsors: Representatives Strow, Kirby, Roach, Ericks, Serben, Appleton, Newhouse, Kilmer, Skinner, Shabro, Simpson, Williams, Tom, Darneille, Morrell, Anderson, Hankins, McCune, Wallace, Green and Ormsby.

Brief History:
Committee Activity:
Financial Institutions & Insurance: 1/31/06, 2/2/06 [DPS].

Brief Summary of Substitute Bill

- Requires a small loan endorsement for any license making small loans to any person physically located in Washington, including loans made through the use of the internet, facsimile, telephone, kiosk, or other remote means.
- Makes any small loan agreement or contract between a borrower and a licensee that does not have a small loan endorsement void and unenforceable.

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 Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, O'Brien, Santos, Serben, Simpson, Strow and Williams.

Staff: Jon Hedegard (786-7127).

Background:

Payday lending practices are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act), Chapter 31.45 RCW. The phrase "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. 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.

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. The Act regulates payday lending practices and provides for regulation of licensees who are specifically authorized to issue small loans. No lender may lend more than $700 to a single borrower at any one time. The lender may charge up to 15 percent for the first $500. If the borrower has a loan in excess of $500, the lender can charge up to 10 percent on the amount over $500. For example, a lender could charge up to $30 for a $200 loan or up to $85 for a $600 loan.

Under the Act, licensees must maintain business books, accounts, and records. The books and accounts must be maintained for at least two years after a transaction. The DFI also has statutory authority to examine books, accounts, records, and files, or other information of licensees and persons that the agency has reason to believe is engaging in the business governed by Chapter 31.45 RCW.

Borrower and lenders may agree to a payment plan for payday loans. 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 lender may charge the borrower a one-time fee in an amount up to the fee or interest on the outstanding principal;
- 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.

The Director of the Department of Financial Institutions (Director) may impose the sanctions against any:
- licensee;
- applicant; or
- director, officer, sole proprietor, partner, controlling person, or employee of a licensee.

Sanctions may include:
- the denial, revocation, suspension, or conditioning of a license;
- an order to cease and desist from specific practices;
- the imposition of a fine not to exceed $100 per day for each day's violation;
- the provision of restitution to borrowers or other injured parties; and
- the removal from office or banning from participation in the affairs of any licensee.

Summary of Substitute Bill:

Any licensee making small loans to any person physically located in Washington must have a small loan endorsement. This includes loans made through the use of the internet, facsimile, telephone, kiosk, or other remote means. Any small loan agreement or contract between a borrower and a licensee that does not have a small loan endorsement is void and unenforceable.

The Act does not apply to a loan made by a private party to another private party if the interest rate charged is less than the usury rate in RCW 19.52.020.

Substitute Bill Compared to Original Bill:

Language is added stating that the Act does not apply to a loan made by a private party to another private party if the interest rate charged is less than the usury rate in RCW 19.52.020.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) Payday lending has an impact on military readiness. This is a key issue for the Department of Defense. The military can't afford or condone the impacts of payday lending on members of the military. It is seeking to address the issue in every state where payday lending is allowed. It is not simply financial irresponsibility. The Navy holds sailors responsible for their debts. The industry targets members of the military and seeks to entrap them. A University of North Carolina study found that payday lenders' profitability is enhanced by chronic borrowers. The Navy trains its sailors on financial issues. We are alerting them to alternatives to payday loans, including a product offered by the Pentagon Federal Credit Union. This impacts all levels of service. The biggest impact is on those service members with four to seven years of service. Although, the military can declare locations off-limits, no location has been declared off-limits yet. The military tries to provide education and combat excessive debt no matter what the source is. Lending by one service member to another is discouraged by the Navy and can lead to punishment. The short-term goal is passage of the bill. A cap on interest is the long-term goal. We would like to see interest limited to an annual percent rate of 36 percent. The businesses that make these loans also sell other products. They existed before payday loans and could survive with a rate of 36 percent. I spoke with people serving on the U.S.S. Stennis. They knew about payday lending but not about the military best practices or other provisions of Washington law. Many of them knew of instances where payday lenders contacted the military chain of command. That was prohibited last year. The harassment of military borrowers has continued. They didn't know to report it to the DFI. I could report it to the DFI but they can't take an action unless the borrower will come forward. We work with faith-based groups to try to improve consumer protections in lending. The provision limiting borrowers is helpful. I recommend that the Committee review the U.S. Bishops publication, "Economic Justice for All." Everyone has a right to consumer protections that are fair and reasonable. Washington law does not provide enough protection and borrowers can find themselves in deep debt. A client could not pay a bill. They borrowed from a payday lender. They found themselves unable to pay the loan. A cap on interest is a reasonable solution.

(With concerns) This is a good bill. I'd like to make it stronger. Some lenders include arbitration clauses which preclude the ability of a borrower to go to court. The DFI has the authority to take action against these lenders today. There are six cases currently in process. We want to make very sure that everyone understands that this is not the Legislature trying to give us new authority. This is within the DFI's scope of authority today.

Testimony Against: Industry supports enforcement against illegal lenders. Our concern is that this bill doesn't look at any other type of unlicensed lending via the internet.

Persons Testifying: (In support) Representative Strow, prime sponsor; Captain T.J. Dargan, United States Navy; Dennis Bassford, Moneytree; and Robin Nester, Washington Women's Employment and Education.

(With concerns) Chuck Cross, Department of Financial Institutions; and Bruce Neas.

(Opposed) Dennis Bassford, Moneytree.

Persons Signed In To Testify But Not Testifying: None.