

HOUSE BILL REPORT

SHB 2881

As Passed House:

February 7, 2006

Title: An act relating to military borrowers doing business with check cashers and sellers.

Brief Description: Regulating check cashers and sellers.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Appleton, Jarrett, Dickerson, Takko, Morris, Williams, Moeller, Flannigan, Haigh, Hudgins, Wallace, Sells, Kilmer, Schual-Berke, Darneille, Hunt, Campbell, Simpson and Ormsby).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/31/06, 2/2/06 [DPS].

Floor Activity:

Passed House: 2/7/06, 74-24.

Brief Summary of Substitute Bill

- Expands the definition of "military borrower" to include a person who has notified the licensee in writing that the person is the legal spouse of a member of the armed forces, National Guard, or reserves.
- Adds to the practices that are prohibited in the collection of a loan of a military borrower.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kirby, Chair; Ericks, Vice Chair; Tom, Assistant Ranking Minority Member; Newhouse, O'Brien, Santos, Simpson, Strow and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Roach, Ranking Minority Member and Serben.

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, employee of a licensee, or applicant.

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.

In 2005, the Legislature passed Engrossed Substitute Senate Bill 5415. The bill applied to military borrowers. It prohibits a licensee from garnishing wages paid for service in the armed forces when collecting any delinquent small loan, contacting the military chain of command of a military borrower in an effort to collect a delinquent small loan, and making a loan from a specific location to a known military borrower when the military borrower's commander has designated that location as off-limits to military personnel. Licensees are required to defer all collection activity against a military borrower during combat or combat support deployment and honor the terms of any repayment agreement between the licensee and any military borrower.

Summary of Substitute Bill:

The definition of "military borrower" is expanded to include a person who has notified the licensee in writing that the person is the legal spouse of a member of the armed forces, National Guard, or reserves.

The bill adds to the practices prohibited in the collection of a loan of a military borrower.

Payday lenders are prohibited from threatening to contact the military chain of command of a military borrower in an effort to collect a delinquent small loan.

Payday lenders are prohibited from communicating with a military borrower in such a manner as to harass, intimidate, threaten, or embarrass the military borrower. This includes but is not limited to communication:

- at an unreasonable hour;
- with unreasonable frequency;
- that includes threats of force or violence;
- that includes threats of criminal prosecution; and
- that includes the use of offensive language.

A communication is presumed to have been made for the purposes of harassment when:

- it is made with a military borrower in any form, manner, or place, more than three times in a single week;
- it is made with a military borrower at his or her place of employment more than one time in a single week; or
- it is made with a military borrower at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Last year's bill did not include spouses. Spouses can be harassed. This can happen when the military partner is stationed abroad. This bill is very necessary. It attempts to regulate increase regulation of payday lenders. The Department of Defense (DOD) is contemplating putting all payday lenders off-limits for military personnel. That would be far more significant and harmful to the payday lenders than this bill. Payday lending has an impact on military readiness. This is a key issue for the DOD. 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 Department of Financial Institutions (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. Adding spouses of the military is a good idea. Several states have done this. There are some issues related to community property and civil rights. The best practices don't restrict the ability to get a loan.

Testimony Against: Industry opposes the bill as written. One issue is the provisions regarding per se harassment. What if the lender asks we call at a certain time because it is the best time for them? The issue of spouses is a problem. Many companies seek to extend military best practices to spouses but we simply can't always know that it is a military spouse. It is against the law to ask. If the bill included a provision requiring the spouse to tell the lender that they are married to a member of the military that would be different. As it is written, if a location is declared off-limits we would violate the law if we gave a loan to a

spouse of a service member. That is true even though we may never know that they are married to a member of the military.

Persons Testifying: (In support) Representative Appleton, prime sponsor; Captain TJ Dargan, United States Navy; and Liz Kosse, Naval Base Kitsap.

(Opposed) Dennis Bassford, Moneytree.

Persons Signed In To Testify But Not Testifying: None.