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HOUSE BILL 2019

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State of Washington

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**By** Representatives Green, Schual-Berke, Kenney, Darneille, Cody, Dickerson, Kagi, Hasegawa, McCoy, McDermott, Lantz, Lovick, Hudgins, Conway, Kessler, P. Sullivan, Hunt, Flannigan, Morrell, O'Brien, B. Sullivan, Moeller, Chase, Quall, McIntire, Williams, Kirby, Ericks, Ormsby and Upthegrove

Read first time 02/15/2005. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to small loans; and amending RCW 31.45.010,  
2 31.45.073, and 31.45.084.

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

4 **Sec. 1.** RCW 31.45.010 and 2003 c 86 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) "Applicant" means a person that files an application for a  
9 license under this chapter, including the applicant's sole proprietor,  
10 owners, directors, officers, partners, members, and controlling  
11 persons.

12 (2) "Borrower" means a natural person who receives a small loan.

13 (3) "Business day" means any day that the licensee is open for  
14 business in at least one physical location.

15 (4) "Check" means the same as defined in RCW 62A.3-104(f) and, for  
16 purposes of conducting the business of making small loans, includes  
17 other electronic forms of payment, including stored value cards,  
18 internet transfers, and automated clearing house transactions.

1 (5) "Check casher" means an individual, partnership, unincorporated  
2 association, or corporation that, for compensation, engages, in whole  
3 or in part, in the business of cashing checks, drafts, money orders, or  
4 other commercial paper serving the same purpose.

5 (6) "Check seller" means an individual, partnership, unincorporated  
6 association, or corporation that, for compensation, engages, in whole  
7 or in part, in the business of or selling checks, drafts, money orders,  
8 or other commercial paper serving the same purpose.

9 (7) "Collateral" means the same as defined in chapter 62A.9A RCW.

10 (8) "Controlling person" means a person owning or controlling ten  
11 percent or more of the total outstanding shares of the applicant or  
12 licensee, if the applicant or licensee is a corporation, and a member  
13 who owns ten percent or more of a limited liability company or limited  
14 liability partnership.

15 (9) "Default" means the borrower's failure to repay the small loan  
16 in compliance with the terms contained in the small loan agreement or  
17 note or failure to make payments in compliance with a loan payment  
18 plan.

19 (10) "Director" means the director of financial institutions.

20 (11) "Financial institution" means a commercial bank, savings bank,  
21 savings and loan association, or credit union.

22 (12) "Licensee" means a check casher or seller licensed by the  
23 director to engage in business in accordance with this chapter. For  
24 purposes of the enforcement powers of this chapter, including the power  
25 to issue cease and desist orders under RCW 31.45.110, "licensee" also  
26 means a check casher or seller who fails to obtain the license required  
27 by this chapter.

28 (13) "Origination date" means the date upon which the borrower and  
29 the licensee initiate a small loan transaction.

30 (14) "Outstanding principal balance" of a small loan means any of  
31 the principal amount that has not been paid by the borrower.

32 (15) "Paid" means that moment in time when the licensee deposits  
33 the borrower's check or accepts cash for the full amount owing on a  
34 valid small loan.

35 (16) "Person" means an individual, partnership, association,  
36 limited liability company, limited liability partnership, trust,  
37 corporation, and any other legal entity.

1 (17) "Principal" means the loan proceeds advanced for the benefit  
2 of the borrower in a small loan, excluding any fee or interest charge.

3 (18) "Rescission" means annulling the loan contract and, with  
4 respect to the small loan contract, returning the borrower and the  
5 licensee to their financial condition prior to the origination date of  
6 the loan.

7 (19) "Small loan" means a loan of up to the maximum amount and for  
8 a period of time up to the maximum term specified in RCW 31.45.073.

9 ~~(20) ("Successive loans" means a series of loans made by the same  
10 licensee to the same borrower in such a manner that no more than three  
11 business days separate the termination date of any one loan and the  
12 origination date of any other loan in the series.~~

13 ~~(21))~~ "Termination date" means the date upon which payment for the  
14 small loan transaction is due or paid to the licensee, whichever occurs  
15 first.

16 ~~((22))~~ (21) "Total of payments" means the principal amount of the  
17 small loan plus all fees or interest charged on the loan.

18 ~~((23))~~ (22) "Trade secret" means the same as defined in RCW  
19 19.108.010.

20 **Sec. 2.** RCW 31.45.073 and 2003 c 86 s 8 are each amended to read  
21 as follows:

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

30 (2) The termination date of a small loan may not exceed the  
31 origination date of that same small loan by more than forty-five days,  
32 including weekends and holidays, unless the term of the loan is  
33 extended by agreement of both the borrower and the licensee and no  
34 additional fee or interest is charged. The borrower shall be  
35 affirmatively and actively offered the option of skipping a payday, and  
36 having the loan repaid out of a subsequent paycheck within forty-five  
37 days, at no additional fee or interest. The maximum principal amount

1 of any small loan, or the outstanding principal balances of all small  
2 loans made by a licensee to a single borrower at any one time, may not  
3 exceed seven hundred dollars.

4 (3) A licensee that has obtained the required small loan  
5 endorsement may charge interest or fees for small loans not to exceed  
6 in the aggregate fifteen percent of the first five hundred dollars of  
7 principal. If the principal exceeds five hundred dollars, a licensee  
8 may charge interest or fees not to exceed in the aggregate ten percent  
9 of that portion of the principal in excess of five hundred dollars. If  
10 a licensee makes more than one loan to a single borrower, and the  
11 aggregated principal of all loans made to that borrower exceeds five  
12 hundred dollars at any one time, the licensee may charge interest or  
13 fees not to exceed in the aggregate ten percent on that portion of the  
14 aggregated principal of all loans at any one time that is in excess of  
15 five hundred dollars. The director may determine by rule which fees,  
16 if any, are not subject to the interest or fee limitations described in  
17 this section. It is a violation of this chapter for any licensee to  
18 knowingly loan to a single borrower at any one time, in a single loan  
19 or in the aggregate, more than the maximum principal amount described  
20 in this section.

21 (4) In connection with making a small loan, a licensee may advance  
22 moneys on the security of a postdated check. The licensee may not  
23 accept any other property, title to property, or other evidence of  
24 ownership of property as collateral for a small loan. The licensee may  
25 accept only one postdated check per loan as security for the loan. A  
26 licensee may permit a borrower to redeem a postdated check with a  
27 payment of cash or the equivalent of cash. The licensee may disburse  
28 the proceeds of a small loan in cash, in the form of a check, or in the  
29 form of the electronic equivalent of cash or a check.

30 (5) No person may at any time cash or advance any moneys on a  
31 postdated check or draft in excess of the amount of goods or services  
32 purchased without first obtaining a small loan endorsement to a check  
33 cashier or check seller license.

34 **Sec. 3.** RCW 31.45.084 and 2003 c 86 s 12 are each amended to read  
35 as follows:

36 (1) A licensee and borrower may agree to a payment plan for a small  
37 loan at any time. (~~After four successive loans and prior to default~~

1 ~~upon the last loan,~~) Each borrower may convert their small loan to a  
2 payment plan. Each agreement for a loan payment plan must be in  
3 writing and acknowledged by both the borrower and the licensee. The  
4 licensee may charge the borrower, at the time both parties enter into  
5 the payment plan, a one-time fee for the payment plan in an amount up  
6 to the fee or interest on the outstanding principal of the loan as  
7 allowed under RCW 31.45.073(3). The licensee may not assess any other  
8 fee, interest charge, or other charge on the borrower as a result of  
9 converting the small loan into a payment plan. This payment plan must  
10 provide for the payment of the total of payments due on the small loan  
11 over a period not less than sixty days in three or more payments,  
12 unless the borrower and licensee agree to a shorter payment period.  
13 The borrower may pay the total of payments at any time. The licensee  
14 may not charge any penalty, fee, or charge to the borrower for  
15 prepayment of the loan payment plan by the borrower. Each licensee  
16 shall conspicuously disclose to each borrower in the small loan  
17 agreement or small loan note that the borrower has access to such a  
18 payment plan (~~(after four successive loans)~~). A licensee's violation  
19 of such a payment plan constitutes a violation of this chapter.

20 (2) The licensee may take postdated checks at the initiation of the  
21 payment plan for the payments agreed to under the plan. If any check  
22 accepted by the licensee as payment under the payment plan is  
23 dishonored, the licensee may not charge the borrower any fee for the  
24 dishonored check.

25 (3) If the borrower defaults on the payment plan, the licensee may  
26 initiate action to collect the total of payments under RCW 31.45.082.  
27 The licensee may charge the borrower a one-time payment plan default  
28 fee of twenty-five dollars.

29 (4) If the licensee enters into a payment plan with the borrower  
30 through an accredited third party, with certified credit counselors,  
31 that is representing the borrower, the licensee's failure to comply  
32 with the terms of that payment plan constitutes a violation of this  
33 chapter.

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