

# HOUSE BILL REPORT

## HB 1027

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### As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

**Title:** An act relating to adding enforcement provisions regarding fraud, deception, and unlicensed internet lending to the chapter governing check cashers and sellers.

**Brief Description:** Restricting small loan practices.

**Sponsors:** Representatives Strow, Kirby, Morrell, Rodne, Haler, Moeller, Kelley and Chase; by request of Department of Financial Institutions.

### Brief History:

#### Committee Activity:

Insurance, Financial Services & Consumer Protection: 1/9/07, 1/11/07 [DP].

#### Brief Summary of Bill

- Requires a small loan endorsement for any person making small loans to any person physically located in Washington, including loans made through the use of the internet, facsimile, telephone, kiosk, or other means.
- Prohibits specific unfair, fraudulent, or misleading practices and makes any transaction that violates a prohibited practice uncollectible and unenforceable.

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## HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

**Majority Report:** Do pass. Signed by 7 members: Representatives Kirby, Chair; Kelley, Vice Chair; Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member; Hurst, Santos and Simpson.

**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

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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.

Borrowers 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 loan; 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.

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**Summary of 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 means.

It is a violation of Chapter 31.45 RCW to:

- directly or indirectly defraud or mislead any borrower, lender, or person;
- directly or indirectly engage in any unfair or deceptive practices;
- directly or indirectly obtain property by fraud or misrepresentation; or
- make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement.

In addition to any other penalties for a violation, any transaction is uncollectible and unenforceable.

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**Appropriation:** None.**Fiscal Note:** Available.**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.**Staff Summary of Public Testimony:**

(In support) This bill is similar in approach to last year's bill. Over the last two years, I have been struck by the difficulty in enforcing Washington laws against out of state lenders. This bill is a positive step in the protection of Washington consumers. By punishing unlicensed lenders, it also helps the licensed marketplace.

Increasingly, loans are being offered over the internet and many are made by unlicensed entities. The significant consumer protections required for loans by licensed entities should be applied to all payday lenders. The Legislature and the DFI are to be commended for the efforts made to license lenders. The DFI's efforts to take vigorous enforcement measures against violators should also be applauded. This bill is supported by the payday lending industry.

Electronic loans are a growing part of the business. Some are made by licensed businesses and that is an appropriate method of competition in the business. Many are made by unlicensed entities and that is a problem for consumers and licensees.

The bill gives the DFI additional tools to protect consumers. The unfair practice language is similar to provisions in other parts of the DFI codes.

Once the money is gone, it may be difficult to recover for the consumer. This bill will help the consumer who has not yet made payments on the illegal loan since the loan is made uncollectible. It will also help the DFI educate lenders and consumers. If out of state lenders know that they have a problem collecting in Washington, they will be less likely to make an illegal loan.

(Opposed) None.

**Persons Testifying:** Representative Strow, prime sponsor; Dennis Bassford, Money Tree; and Deborah Bortner, Department of Financial Institutions.

**Persons Signed In To Testify But Not Testifying:** None.