

HOUSE BILL REPORT

HB 2027

As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

Title: An act relating to using postdated checks or drafts as security for small loans.

Brief Description: Using postdated checks or drafts as security for small loans.

Sponsors: Representative Santos.

Brief History:

Committee Activity:

Insurance, Financial Services & Consumer Protection: 2/13/07, 2/27/07 [DPS].

Brief Summary of Substitute Bill

- Requires a licensee to record the amount of cash paid by a borrower and keep the document in the licensee's business records.

HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member; Hurst, Rodne, 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 loan" refers to a type of short-term, 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

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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 at any time. 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.

Summary of Substitute Bill:

Whenever a borrower makes a cash payment on a small loan, a licensee must record the amount of cash paid and require the borrower to sign and date a copy of the receipt, or a similar statement. The licensee must keep the signed receipt in its business records.

Substitute Bill Compared to Original Bill:

The provisions in the original bill are removed. The provisions regarding the recording of cash payments by a borrower are added.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The bill reinstates the law prior to 2003. It is an important tool to prevent possible illegal rollovers. It creates an audit trail. Currently, if the check is recovered by payment in cash, the DFI can't tell if a rollover occurred. Rollovers can lead to a cycle of debt. The DFI has a budget request for additional staff to do investigations and enforcement with regards to payday loans. The DFI has been doing considerable outreach into communities around the state trying to educate people.

The DFI looked into the issue regarding the prohibition on buying back a post-dated check and do not believe that federal preemption is an issue. The law that was referred to establishes certain things as legal tender. It does not prohibit a state from regulating the terms of a payday loan.

(In support with concerns) There are some issues with this bill. If a borrower comes in on the due date and has the cash to pay off the loan and does not have money in their account, we will have to refuse to take the cash and later deposit the check even though we know that the account may have inadequate funds. This can lead to increased charges on customers. We often get calls from customers that ask us to hang on to a check beyond the due date because they don't have the funds. We do this as a service to customers even though we do not charge a fee. This bill would take away that ability. The proposal may violate federal law and may be preempted. If an audit trail is needed, we'd be happy to work on a better method. Originally, there was a requirement that a check be deposited as soon as practicable because the chapter applied to check cashers and sellers but payday loans were prohibited. Since a check casher or seller could not make a loan, it was believed that the check should be deposited. After small loans were permitted under the chapter, the DFI never enforced this requirement because it did not help consumers to enforce it. That is why the law was changed in 2003 to allow a lender to hang on to the check but they could not charge a fee. If there is no additional cost to the consumer it can only benefit the consumer. I understand the need for an audit trail but this may not be the best method. There is a possibility of federal preemption.

Customers want to control their budget. Currently, if a customer can't pay on time, we can extend the loan. Something may be needed for an audit trail but this may not be the best option.

(Opposed) The effort to create an audit trail and prevent rollovers is important. The bill is inadequate because it doesn't address the interest rate of the loans. My spouse had to use these loans. Thankfully, someone was able and willing to extend a loan. The loan didn't impact his credit. This is an important option for people. Customers are informed of their options so they can make sound decisions about their short-term credit issues. Customers know what they are doing and they like this product. These stores and their employees are part of the community. They lend to friends and neighbors. Payment plan options are posted in stores. Tellers can extend loan dates at no cost if people tell them that they have a problem making their repayment on time.

Persons Testifying: (In support) Debra Bortner, Department of Financial Institutions.

(In support with concerns) Dennis Bassford and Mark Thomson, Moneytree; and Kevin McCarthy, Check Masters.

(Opposed) Rebecca Shivel, Michele Walker, and Rochelle Blake, Moneytree.

Persons Signed In To Testify But Not Testifying: None.