
HOUSE BILL 1021

State of Washington

60th Legislature

2007 Regular Session

By Representatives Appleton, Miloscia, Dickerson, Hasegawa, Morrell, Green, Sequist, Darneille, Conway, McCoy, Chase, Roberts, Haigh, Sells, Dunshee, Hunt, Flannigan, Ormsby, McDermott, Schual-Berke, McIntire, Wallace, Moeller, Goodman, Lantz, Campbell and Rolfes

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1 AN ACT Relating to small loans; amending RCW 31.45.073, 31.45.084,
2 31.45.088, and 31.45.210; creating new sections; and prescribing
3 penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that consumers should
6 be able to access loans at reasonable rates; no one should have to pay
7 usurious interest rates. Paying the interest rates associated with
8 payday loans can cause a borrower to need a loan to pay off their loan.
9 By turning to payday loans again and again, the borrower can become
10 trapped in a debt cycle. This cycle is most likely to impact people
11 with low incomes who can least afford to pay high interest rates and
12 have the fewest options in breaking the debt cycle. While every person
13 must take responsibility for their actions and decisions, the state has
14 a duty to help protect consumers, particularly the most vulnerable
15 members of our society. To fulfill this duty, the laws regarding
16 payday loans must be vigorously enforced. In particular, the director
17 of the department of financial institutions must ensure compliance with
18 laws prohibiting rollovers by thorough and regular examinations and

1 investigations. Violations of the prohibition on rollovers or other
2 consumer protections by a licensee in chapter 31.45 RCW must be
3 followed by timely and appropriate disciplinary actions.

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

6 (1) No licensee may engage in the business of making small loans to
7 any person physically located in Washington state, including through
8 use of the internet, facsimile, telephone, kiosk, or other remote means
9 without first obtaining a small loan endorsement to its license from
10 the director in accordance with this chapter. An endorsement will be
11 required for each location where a licensee engages in the business of
12 making small loans, but a small loan endorsement may authorize a
13 licensee to make small loans at a location different than the licensed
14 locations where it cashes or sells checks. A licensee may have more
15 than one endorsement.

16 (2) The termination date of a small loan may not exceed the
17 origination date of that same small loan by less than ninety days or
18 more than ((forty-five)) one hundred twenty days, including weekends
19 and holidays, unless the term of the loan is extended by agreement of
20 both the borrower and the licensee and no additional fee or interest is
21 charged. The maximum principal amount of any small loan, or the
22 outstanding principal balances of all small loans made by a licensee to
23 a single borrower at any one time, may not exceed seven hundred
24 dollars.

25 (3) A licensee that has obtained the required small loan
26 endorsement may charge interest or fees for small loans not to exceed
27 in the aggregate ~~((fifteen percent of the first five hundred dollars of~~
28 ~~principal. If the principal exceeds five hundred dollars, a licensee~~
29 ~~may charge interest or fees not to exceed in the aggregate ten percent~~
30 ~~of that portion of the principal in excess of five hundred dollars. If~~
31 ~~a licensee makes more than one loan to a single borrower, and the~~
32 ~~aggregated principal of all loans made to that borrower exceeds five~~
33 ~~hundred dollars at any one time, the licensee may charge interest or~~
34 ~~fees not to exceed in the aggregate ten percent on that portion of the~~
35 ~~aggregated principal of all loans at any one time that is in excess of~~
36 ~~five hundred dollars. The director may determine by rule which fees,~~
37 ~~if any, are not subject to the interest or fee limitations described in~~

1 ~~this section~~) thirty-six percent per annum. It is a violation of this
2 chapter for any licensee to knowingly loan to a single borrower at any
3 one time, in a single loan or in the aggregate, more than the maximum
4 principal amount described in this section.

5 (4) Prior to making a small loan, a licensee must fully consider
6 the ability of the potential borrower to repay the loan.

7 (5) In connection with making a small loan, a licensee may advance
8 moneys on the security of a postdated check. The licensee may not
9 accept any other property, title to property, or other evidence of
10 ownership of property as collateral for a small loan. The licensee may
11 accept only one postdated check per loan as security for the loan. A
12 licensee may permit a borrower to redeem a postdated check with a
13 payment of cash or the equivalent of cash. The licensee may disburse
14 the proceeds of a small loan in cash, in the form of a check, or in the
15 form of the electronic equivalent of cash or a check.

16 ((+5)) (6) No person may at any time cash or advance any moneys on
17 a postdated check or draft in excess of the amount of goods or services
18 purchased without first obtaining a small loan endorsement to a check
19 casher or check seller license.

20 (7) Any small loan agreement or contract made between a borrower
21 and a licensee without the licensee first obtaining a small loan
22 endorsement is void and unenforceable.

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

25 (1) A licensee and borrower may agree to a payment plan for a small
26 loan at any time. After four successive loans and prior to default
27 upon the last loan, each borrower may convert their small loan to a
28 payment plan. Each agreement for a loan payment plan must be in
29 writing and acknowledged by both the borrower and the licensee. The
30 licensee may charge the borrower, at the time both parties enter into
31 the payment plan, a one-time fee for the payment plan in an amount up
32 to the fee or interest on the outstanding principal of the loan as
33 allowed under RCW 31.45.073(3). The licensee may not assess any other
34 fee, interest charge, or other charge on the borrower as a result of
35 converting the small loan into a payment plan. This payment plan must
36 provide for the payment of the total of payments due on the small loan
37 over a period not less than sixty days in three or more payments,

1 unless the borrower and licensee agree to a shorter payment period.
2 The borrower may pay the total of payments at any time. The licensee
3 may not charge any penalty, fee, or charge to the borrower for
4 prepayment of the loan payment plan by the borrower. Each licensee
5 shall conspicuously disclose to each borrower in the small loan
6 agreement or small loan note that the borrower has access to such a
7 payment plan after four successive loans. A licensee's violation of
8 such a payment plan constitutes a violation of this chapter.

9 (2) The licensee may take postdated checks at the initiation of the
10 payment plan for the payments agreed to under the plan. If any check
11 accepted by the licensee as payment under the payment plan is
12 dishonored, the licensee may not charge the borrower any fee for the
13 dishonored check.

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

18 (4) If the licensee enters into a payment plan with the borrower
19 through an accredited third party, with certified credit counselors,
20 that is representing the borrower, the licensee's failure to comply
21 with the terms of that payment plan constitutes a violation of this
22 chapter.

23 (5) Military borrowers, as defined in RCW 31.45.210(3), must be
24 offered the payment plan option terms and conditions in RCW
25 31.45.210(2).

26 **Sec. 4.** RCW 31.45.088 and 2003 c 86 s 14 are each amended to read
27 as follows:

28 (1) When advertising the availability of small loans, if a licensee
29 includes in an advertisement the fee or interest rate charged by the
30 licensee for a small loan, then the licensee shall also disclose the
31 annual percentage rate resulting from this fee or interest rate.

32 (2) When advertising the availability of small loans, compliance
33 with all applicable state and federal laws and regulations, including
34 the truth in lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12
35 C.F.R. (~~Sec. [Part]~~) Part 226 constitutes compliance with subsection
36 (1) of this section.

1 (3) When making a small loan, each licensee shall disclose to the
2 borrower the terms of the small loan, including the principal amount of
3 the small loan, the total of payments of the small loan, the fee or
4 interest rate charged by the licensee on the small loan, the cost of
5 the loan expressed as an amount of dollars per hundred dollars
6 borrowed, and the annual percentage rate resulting from this fee or
7 interest rate.

8 (4) When making a small loan, disclosure of the terms of the small
9 loan in compliance with all applicable state and federal laws and
10 regulations, including the truth in lending act, 15 U.S.C. Sec. 1601
11 and Regulation Z, 12 C.F.R. ((Sec.—{Part})) Part 226 constitutes
12 compliance with subsection (3) of this section.

13 **Sec. 5.** RCW 31.45.210 and 2005 c 256 s 1 are each amended to read
14 as follows:

15 (1) A licensee shall:

16 (a) When collecting any delinquent small loan, not garnish any
17 wages or salary paid for service in the armed forces;

18 (b) Defer any payments on a small loan that was taken out prior to
19 deployment by a military borrower who has been deployed to a combat or
20 combat support posting until thirty days after the duration of the
21 posting. A licensee shall not charge a fee or accrue interest on a
22 small loan while the payments are deferred;

23 (c) Defer ((~~for~~)) until thirty days after the duration of the
24 posting all collection activity against a military borrower who has
25 been deployed to a combat or combat support posting ((~~for the duration~~
26 ~~of the posting~~));

27 ((~~e~~)) (d) Not contact, or threaten to contact, either orally or
28 in writing, the military chain of command of a military borrower in an
29 effort to collect a delinquent small loan;

30 ((~~d~~)) (e) Not communicate with a military borrower in such a
31 manner as to harass, intimidate, threaten, or embarrass the military
32 borrower, including but not limited to communication at an unreasonable
33 hour, with unreasonable frequency, by threats of force or violence, by
34 threats of criminal prosecution, and by use of offensive language. A
35 communication is presumed to have been made for the purposes of
36 harassment when:

1 (i) It is made with a military borrower in any form, manner, or
2 place, more than three times in a single week;

3 (ii) It is made with a military borrower at his or her place of
4 employment more than one time in a single week; or

5 (iii) It is made with a military borrower at his or her place of
6 residence between the hours of 9:00 p.m. and 7:30 a.m.;

7 (f) Honor the terms of any repayment agreement between the licensee
8 and any military borrower, including any repayment agreement negotiated
9 through military counselors or third party credit counselors; ((and

10 (e))) (g) Not require binding arbitration in connection with a
11 small loan to a military borrower as a condition for the small loan:

12 (i) A military borrower must be informed in clear, written language
13 that the military borrower may reject binding arbitration and will
14 still obtain the loan; and

15 (ii) A military borrower must sign a statement indicating that they
16 understand that binding arbitration is not required and that they are
17 choosing the option of binding arbitration;

18 (h) Not make a loan from a specific location to a person that the
19 licensee knows is a military borrower when the military borrower's
20 commander has notified the licensee in writing that the specific
21 location is designated off-limits to military personnel under their
22 command; and

23 (i) Not directly market small loans to military borrowers in a
24 manner that suggests that the licensee is affiliated with the armed
25 forces of the United States.

26 (2)(a) A military borrower may convert their small loan to a
27 payment plan at any time. An agreement for a loan payment plan must be
28 in writing and acknowledged by both the military borrower and the
29 licensee. The licensee may not assess any fee, interest charge, or
30 other charge on the military borrower as a result of converting the
31 small loan into a payment plan. This payment plan must provide for the
32 payment of the total of payments due on the small loan over a period of
33 not less than one hundred twenty days in three or more payments, unless
34 the military borrower and licensee agree to a shorter payment period.
35 The military borrower may pay the total of payments at any time. The
36 licensee may not charge any penalty, fee, or charge to the borrower for
37 prepayment of the loan payment plan by the military borrower. Each
38 licensee shall conspicuously disclose to each military borrower in the

1 small loan agreement or small loan note that the military borrower has
2 access to such a payment plan after four successive loans. A
3 licensee's violation of such a payment plan constitutes a violation of
4 this chapter.

5 (b) The licensee may take postdated checks at the initiation of the
6 payment plan for the payments agreed to under the plan. If any check
7 accepted by the licensee as payment under the payment plan is
8 dishonored, the licensee may not charge the military borrower any fee
9 for the dishonored check.

10 (c) If the military borrower defaults on the payment plan, the
11 licensee may initiate action to collect the total of payments under RCW
12 31.45.082. The licensee may charge the military borrower a one-time
13 payment plan default fee of twenty-five dollars.

14 (d) If the licensee enters into a payment plan with the military
15 borrower through an accredited third party, with certified credit
16 counselors, that is representing the military borrower, the licensee's
17 failure to comply with the terms of that payment plan constitutes a
18 violation of this chapter.

19 (3) For purposes of this section, "military borrower" means any
20 active duty member of the armed forces of the United States, or the
21 member's spouse, or any member of the national guard or the reserves of
22 the armed forces of the United States who has been called to active
23 duty, or the member's spouse.

24 NEW SECTION. Sec. 6. The director of the department of financial
25 institutions shall study the merits of implementing a real-time
26 database that allows licensees to verify if a consumer has an
27 outstanding small loan. The director shall study the cost of a
28 database and the effectiveness of a database in limiting the
29 possibility of an excessive number of contemporaneous loans. The
30 director must provide the findings of this study to the committees of
31 the legislature that address financial regulation no later than
32 November 30, 2007. The director may include recommendations based upon
33 the study.

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