

SHB 1709 - H AMD 257

By Representative Nelson

ADOPTED AS AMENDED 03/10/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that some small loan
4 borrowers are unable to pay the entire loaned amount when it is due.
5 Many of these borrowers take out multiple loans to pay off the original
6 borrowed sum.

7 It is the legislature's intent to reduce or limit the number of
8 borrowers taking out multiple loans by providing for installment plans
9 that give a borrower a better opportunity to pay off their original
10 small loan without having to resort to taking out a subsequent loan or
11 loans.

12 This act shall be liberally construed to effectuate the
13 legislature's intent to protect borrowers.

14 **Sec. 2.** RCW 31.45.010 and 2003 c 86 s 1 are each amended to read
15 as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Applicant" means a person that files an application for a
19 license under this chapter, including the applicant's sole proprietor,
20 owners, directors, officers, partners, members, and controlling
21 persons.

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

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

25 (4) "Check" means the same as defined in RCW 62A.3-104(f) and, for
26 purposes of conducting the business of making small loans, includes
27 other electronic forms of payment, including stored value cards,
28 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))~~ pay any installment plan payment on an installment plan within
19 ten days after the date upon which the installment was scheduled to be
20 paid.

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

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

24 (12) "Installment plan" is a contract between a licensee and
25 borrower that provides that the loaned amount will be repaid in
26 substantially equal installments scheduled on or after a borrower's pay
27 dates and no less than fourteen days apart.

28 (13) "Licensee" means a check casher or seller licensed by the
29 director to engage in business in accordance with this chapter. For
30 purposes of the enforcement powers of this chapter, including the power
31 to issue cease and desist orders under RCW 31.45.110, "licensee" also
32 means a check casher or seller who fails to obtain the license required
33 by this chapter.

34 ~~((+13))~~ (14) "Loaned amount" means the outstanding principal
35 balance and any fees authorized under RCW 31.45.073 that have not been
36 paid by the borrower.

37 (15) "Origination date" means the date upon which the borrower and
38 the licensee initiate a small loan transaction.

1 ~~((14))~~ (16) "Outstanding principal balance" of a small loan means
2 any of the principal amount that has not been paid by the borrower.

3 ~~((15))~~ (17) "Paid" means that moment in time when the licensee
4 deposits the borrower's check or accepts cash for the full amount owing
5 on a valid small loan. If the borrower's check is returned by the
6 borrower's bank for insufficient funds, the licensee shall not consider
7 the loan paid.

8 ~~((16))~~ (18) "Person" means an individual, partnership,
9 association, limited liability company, limited liability partnership,
10 trust, corporation, and any other legal entity.

11 ~~((17))~~ (19) "Principal" means the loan proceeds advanced for the
12 benefit of the borrower in a small loan, excluding any fee or interest
13 charge.

14 ~~((18))~~ (20) "Rescission" means annulling the loan contract and,
15 with respect to the small loan contract, returning the borrower and the
16 licensee to their financial condition prior to the origination date of
17 the loan.

18 ~~((19))~~ (21) "Small loan" means a loan of up to the maximum amount
19 and for a period of time up to the maximum term specified in RCW
20 31.45.073.

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

25 ~~((21))~~ (22) "Termination date" means the date upon which payment
26 for the small loan transaction is due or paid to the licensee,
27 whichever occurs first.

28 ~~((22))~~ (23) "Total of payments" means the principal amount of the
29 small loan plus all fees or interest charged on the loan.

30 ~~((23))~~ (24) "Trade secret" means the same as defined in RCW
31 19.108.010.

32 **Sec. 3.** RCW 31.45.073 and 2003 c 86 s 8 are each amended to read
33 as follows:

34 (1) No licensee may engage in the business of making small loans
35 without first obtaining a small loan endorsement to its license from
36 the director in accordance with this chapter. An endorsement will be
37 required for each location where a licensee engages in the business of

1 making small loans, but a small loan endorsement may authorize a
2 licensee to make small loans at a location different than the licensed
3 locations where it cashes or sells checks. A licensee may have more
4 than one endorsement.

5 (2) A licensee must set the due date of a small loan on or after
6 the date of the borrower's next pay date. If a borrower's next pay
7 date is within seven days of taking out the loan, a licensee must set
8 the due date of a small loan on or after the borrower's second pay date
9 after the date the small loan is made. The termination date of a small
10 loan may not exceed the origination date of that same small loan by
11 more than forty-five days, including weekends and holidays, unless the
12 term of the loan is extended by agreement of both the borrower and the
13 licensee and no additional fee or interest is charged. The maximum
14 principal amount of any small loan, or the outstanding principal
15 balances of all small loans made by ((a)) all licensees to a single
16 borrower at any one time, may not exceed seven hundred dollars or
17 thirty percent of the gross monthly income of the borrower, whichever
18 is lower. A licensee is prohibited from making a small loan to a
19 borrower who is in default on another small loan until thirty days
20 after that loan is paid in full or two years have passed from the
21 origination date of the small loan, whichever occurs first.

22 (3) A licensee is prohibited from making a small loan to a borrower
23 in an installment plan with any licensee until thirty days after the
24 plan is paid in full or two years have passed from the origination date
25 of the installment plan, whichever occurs first.

26 (4) A borrower is prohibited from receiving more than eight small
27 loans from all licensees in any twelve-month period. A licensee is
28 prohibited from making a small loan to a borrower if making that small
29 loan would result in a borrower receiving more than eight small loans
30 from all licensees in any twelve-month period.

31 (5) A licensee that has obtained the required small loan
32 endorsement may charge interest or fees for small loans not to exceed
33 in the aggregate fifteen percent of the first five hundred dollars of
34 principal. If the principal exceeds five hundred dollars, a licensee
35 may charge interest or fees not to exceed in the aggregate ten percent
36 of that portion of the principal in excess of five hundred dollars. If
37 a licensee makes more than one loan to a single borrower, and the
38 aggregated principal of all loans made to that borrower exceeds five

1 hundred dollars at any one time, the licensee may charge interest or
2 fees not to exceed in the aggregate ten percent on that portion of the
3 aggregated principal of all loans at any one time that is in excess of
4 five hundred dollars. The director may determine by rule which fees,
5 if any, are not subject to the interest or fee limitations described in
6 this section. It is a violation of this chapter for any licensee to
7 knowingly loan to a single borrower at any one time, in a single loan
8 or in the aggregate, more than the maximum principal amount described
9 in this section.

10 ~~((+4))~~ (6) In connection with making a small loan, a licensee may
11 advance moneys on the security of a postdated check. The licensee may
12 not accept any other property, title to property, or other evidence of
13 ownership of property as collateral for a small loan. The licensee may
14 accept only one postdated check per loan as security for the loan. A
15 licensee may permit a borrower to redeem a postdated check with a
16 payment of cash or the equivalent of cash. The licensee may disburse
17 the proceeds of a small loan in cash, in the form of a check, or in the
18 form of the electronic equivalent of cash or a check.

19 ~~((+5))~~ (7) No person may at any time cash or advance any moneys on
20 a postdated check or draft in excess of the amount of goods or services
21 purchased without first obtaining a small loan endorsement to a check
22 casher or check seller license.

23 **Sec. 4.** 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
26 small loan at any time. After four successive loans and prior to
27 default upon the last loan, each))~~ If a borrower notifies a licensee
28 that the borrower will be or is unable to repay a loan when it is due,
29 the licensee must inform the borrower that the borrower may convert
30 their small loan to ((a payment)) an installment plan. The licensee
31 must convert the small loan to an installment plan at the borrower's
32 request. Each agreement for a loan ~~((payment))~~ installment plan must
33 be in writing and acknowledged by both the borrower and the licensee.
34 ~~((The licensee may charge the borrower, at the time both parties enter
35 into the payment plan, a one-time fee for the payment plan in an amount
36 up to the fee or interest on the outstanding principal of the loan as
37 allowed under RCW 31.45.073(3).))~~ The licensee may not assess any

1 other fee, interest charge, or other charge on the borrower as a result
2 of converting the small loan into (~~(a payment)~~) an installment plan.
3 This (~~(payment)~~) installment plan must provide for the payment of the
4 total of payments due on the small loan over a period not less than
5 (~~(sixty)~~) ninety days (~~((in three or more payments, unless the borrower~~
6 ~~and licensee agree to a shorter payment period))~~) for a loan amount of
7 up to and including four hundred dollars. For a loaned amount over
8 four hundred dollars, the installment plan must be a period not less
9 than one hundred eighty days. The borrower may pay the total of
10 (~~(payments)~~) installments at any time. The licensee may not charge any
11 penalty, fee, or charge to the borrower for prepayment of the loan
12 (~~(payment)~~) installment plan by the borrower. Each licensee shall
13 conspicuously disclose to each borrower in the small loan agreement or
14 small loan note that the borrower has access to such (~~(a payment)~~) an
15 installment plan (~~((after four successive loans))~~). A licensee's
16 violation of such (~~(a payment)~~) an installment plan constitutes a
17 violation of this chapter.

18 (2) The licensee (~~(may take)~~) must return any postdated checks that
19 the borrower has given to the licensee for the original small loan at
20 the initiation of the (~~(payment)~~) installment plan (~~((for the payments~~
21 ~~agreed to under the plan. If any check accepted by the licensee as~~
22 ~~payment under the payment plan is dishonored, the licensee may not~~
23 ~~charge the borrower any fee for the dishonored check))~~).

24 (3) (~~((If the borrower defaults on the payment plan, the licensee~~
25 ~~may initiate action to collect the total of payments under RCW~~
26 ~~31.45.082.))~~) A licensee may take postdated checks for installment plan
27 payments at the time the installment plan is originated. If any check
28 accepted as payment under the installment plan is dishonored, the
29 licensee may not charge the borrower any fee for the dishonored check.
30 If a borrower defaults on the installment plan, the licensee may charge
31 the borrower a one-time (~~(payment)~~) installment plan default fee of
32 twenty-five dollars.

33 (4) If the licensee enters into (~~(a payment)~~) an installment plan
34 with the borrower through an accredited third party, with certified
35 credit counselors, that is representing the borrower, the licensee's
36 failure to comply with the terms of that (~~(payment)~~) installment plan
37 constitutes a violation of this chapter.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 31.45 RCW
2 to read as follows:

3 (1)(a) In addition to other disclosures required by this chapter,
4 the application for a small loan must include a statement that is
5 substantially similar to the following: "At the time you repay this
6 loan, you should have sufficient funds to meet your other financial
7 obligations. If you cannot pay other bills because you are paying off
8 this debt, you should go into the installment plan offered in
9 connection with this loan."

10 (b) The statement in (a) of this subsection must be on the front
11 page of the loan application and must be in at least twelve point type.

12 (2) The director may adopt rules to implement this section.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 31.45 RCW
14 to read as follows:

15 (1) The director must, by contract with a vendor or service
16 provider or otherwise, develop and implement a system by means of which
17 a licensee may determine:

18 (a) Whether a consumer has an outstanding small loan;

19 (b) The number of small loans the consumer has outstanding;

20 (c) Whether the borrower is eligible for a loan under RCW
21 31.45.073;

22 (d) Whether the borrower is in an installment plan; and

23 (e) Any other information necessary to comply with chapter 31.45
24 RCW.

25 (2) The director may specify the form and contents of the system by
26 rule. Any system must provide that the information entered into or
27 stored by the system is:

28 (a) Accessible to and usable by licensees and the director from any
29 location in this state; and

30 (b) Secured against public disclosure, tampering, theft, or
31 unauthorized acquisition or use.

32 (3) If the system described in subsection (1) of this section is
33 developed and implemented, a licensee making small loans under chapter
34 31.45 RCW must enter or update the required information in subsection
35 (1) of this section at the time that the small loan transaction is
36 conducted by the licensee.

1 (4) A licensee must continue to enter and update all required
2 information for any loans subject to chapter 31.45 RCW that are
3 outstanding or have not yet expired after the date on which the
4 licensee no longer has the license or small loan endorsement required
5 by this chapter. Within ten business days after ceasing to make loans
6 subject to chapter 31.45 RCW, the licensee must submit a plan for
7 continuing compliance with this subsection to the director for
8 approval. The director must promptly approve or disapprove the plan
9 and may require the licensee to submit a new or modified plan that
10 ensures compliance with this subsection.

11 (5) If the system described in subsection (1) of this section is
12 developed and implemented, the director shall adopt rules to set the
13 fees licensees shall pay to the vendor or service provider for the
14 operation and administration of the system and the administration of
15 this chapter by the department.

16 (6) The director shall adopt rules establishing standards for the
17 retention, archiving, and deletion of information entered into or
18 stored by the system described in subsection (1) of this section.

19 (7) The information in the system described in subsection (1) of
20 this section is not subject to public inspection or disclosure under
21 chapter 42.56 RCW.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 31.45 RCW
23 to read as follows:

24 (1) The director must collect and submit the following information
25 in a report to the financial services committees of the senate and
26 house of representatives:

27 (a) The number of borrowers entered into an installment plan since
28 the effective date of this section;

29 (b) How the number of borrowers in installment plans compares to
30 the number of borrowers in installment plans in years previous to the
31 effective date of this section;

32 (c) The number of borrowers who have defaulted since the effective
33 date of this section;

34 (d) If known on the effective date of this section, how the number
35 of borrowers who have defaulted compares to the number of borrowers who
36 defaulted in years previous to the effective date of this section; and

1 (e) Any other information that the director believes is relevant or
2 useful.

3 (2) Failure to provide the director information required by this
4 section is a violation of this chapter.

5 **Sec. 8.** RCW 42.56.230 and 2008 c 200 s 5 are each amended to read
6 as follows:

7 The following personal information is exempt from public inspection
8 and copying under this chapter:

9 (1) Personal information in any files maintained for students in
10 public schools, patients or clients of public institutions or public
11 health agencies, or welfare recipients;

12 (2) Personal information in files maintained for employees,
13 appointees, or elected officials of any public agency to the extent
14 that disclosure would violate their right to privacy;

15 (3) Information required of any taxpayer in connection with the
16 assessment or collection of any tax if the disclosure of the
17 information to other persons would (a) be prohibited to such persons by
18 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the
19 taxpayer's right to privacy or result in unfair competitive
20 disadvantage to the taxpayer;

21 (4) Credit card numbers, debit card numbers, electronic check
22 numbers, card expiration dates, or bank or other financial account
23 numbers, except when disclosure is expressly required by or governed by
24 other law; (~~and~~)

25 (5) Personal and financial information related to a small loan or
26 any system of authorizing a small loan in section 6 of this act; and

27 (6) Documents and related materials and scanned images of documents
28 and related materials used to prove identity, age, residential address,
29 social security number, or other personal information required to apply
30 for a driver's license or identicard.

31 NEW SECTION. **Sec. 9.** The director or the director's designee may
32 take the actions necessary to ensure this act is implemented on its
33 effective date.

34 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2010."

EFFECT: Definitions of "installment plan" and "loaned amount" are added. The definitions of "default" and "paid" are modified. A licensee is prohibited from making a small loan to a borrower if making that small loan would result in a borrower receiving more than eight small loans from all licensees in any twelve-month period. An installment plan is no longer automatically triggered by a borrower's inability to repay. A licensee that has been told by a borrower that the borrower will not be able to repay the loan must inform the borrower that the borrower may convert the small loan to an installment plan. The licensee must convert the loan to an installment plan upon the request of the borrower. A licensee is prohibited from making a small loan to a borrower that is in an installment plan or is in default on a small loan. This prohibition lasts for two years after the small loan was made or until the loan or installment plan is paid in full, whichever is earlier. An application form for a small loan must include specific disclosure about the installment plan to the borrower. Provisions regarding the default on an installment plan are struck. A licensee may not charge a fee for a dishonored check in connection to a payment plan but may charge a one-time \$25 fee if the borrower defaults on the payment plan. A licensee may take postdated checks for the installment plan. The effective date is delayed to January 1, 2010.

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