SENATE BILL REPORT
ESHB 1709

As of April 16, 2009

Title: An act relating to fee and installment plan assistance for borrowers at risk of default on small loans.

Brief Description: Providing fee and installment plan assistance for borrowers at risk of default on small loans.

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Nelson, White, Cody, Carlyle, Orwall, McCoy, Darneille and Ormsby).

Brief History: Passed House: 3/09/09, 84-10.
Committee Activity: Labor, Commerce & Consumer Protection: 3/23/09.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Alison Mendiola (786-7483)

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 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 (also known as "payday loans"). No licensee may lend more than $700 to a single borrower at any one time. The licensee may charge up to 15 percent for the first $500. If the borrower has a loan in excess of $500, the licensee can charge up to 10 percent on the amount over $500. For example, a licensee could charge up to $50 for a $500 loan or up to $95 for a $900 loan.

Borrowers and licensee may agree to a payment plan for payday loans at any time. However, 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 licensee 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.

Summary of Bill: Loan Terms. The minimum term of a loan is the borrower's next paycheck unless that is less than seven days. If it is less than seven days, the minimum term is the date of the next following pay date. A borrower may not take out more than $700 in small loans at any time from all lenders. A borrower may not borrow more than 30 percent of that borrower's gross monthly income.

A licensee is prohibited from making a small loan to a borrower that is in default on a small loan. This prohibition lasts until the loan is paid in full or for two years after the small loan was made, whichever is earlier. A licensee is prohibited from making a small loan to a borrower that is in an installment plan. This prohibition lasts until the installment plan is paid in full or for two years after the origination of the installment plan, whichever is earlier. 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 12-month period.

Disclosure. An application form for a small loan must disclose the installment plan to the borrower in a specified manner.

Installment Plan. The existing payment plan is eliminated. A new installment plan is created. The lender must inform the borrower that if the borrower cannot repay a loan when the loan is due, then the borrower may convert the small loan to an installment plan. The lender must convert a small loan to an installment plan at the borrower's request. A loan of up to $400 has a minimum term of 90 days for a loan with payments in substantially equal installments on or after a borrower's pay dates and at least 14 days apart. A loan of over $400 has a minimum term of 180 days with payments in substantially equal installments on or after a borrower's pay dates and at least 14 days apart. A fee is not allowed for the installment plan. The borrower may pay the total at any time without a penalty. The lender must return any postdated check from the borrower for the original small loan when the borrower enters into an installment plan. A licensee may take postdated checks for the installment plan. A licensee may not charge a fee for a dishonored check in connection to an installment plan but may charge a one-time $25 fee if the borrower defaults on the installment plan.

Enforcement System. A system is authorized to enforce these provisions and other parts of chapter 31.45 RCW. The use of the system will enable a licensee to verify if the potential borrower is eligible for a small loan. The system must be available in real-time and secure against unauthorized acquisition or use, tampering, or theft. The Director of the DFI

(Director) must establish the fee by rule. A lender may not charge an additional sum to recover the fee. Information in the system is exempt from public disclosure.

<u>Report.</u> The Director must collect and submit the following information to the Legislature:

- the number of borrowers entered into an installment plan since the effective date of this section;
- how the number of borrowers in installment plans compares to the number of borrowers in payment plans in years previous to the effective date of this section;
- the number of borrowers who have defaulted since the effective date of this section;
- the number of borrowers who have defaulted compared to the number of borrowers who defaulted in years previous to the effective date of the new installment plan; and any other information that the Director believes is relevant or useful.

Appropriation: None.

Fiscal Note: Available.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: Yes.

Effective Date: January 1, 2010.

Staff Summary of Public Testimony: PRO: While opponents of payday lending would like to see more consumer protections, this is a step in the right direction. This bill is the first step in protecting consumers while preserving access to those who need payday loans for emergency purposes. Regarding the installment plan, the success of the bill will be the implementation of the plan and how many people enter it as an alternative to the cycle of debt. Alternatives like credit unions and access to credit are needed. A cap like the military has (36 percent), and prohibiting post-dated checks are additional steps the Legislature could take.

CON: We should be cautious about restricting access to payday loans, which in the end will harm the consumers we're trying to help. Also, some businesses already work with customers who can't afford to pay back the loan, so the current law works just fine. This bill will result in closing down mom-and-pop operations.

OTHER: The combination of limiting the number of loans, and creating a flexible installment plan and database will cause some stores to close. The payday industry employs thousands of people in Washington and contributes to the economy. With these restrictions, more borrowers will turn to the Internet where there is no regulation.

Persons Testifying: PRO: Representative Nelson, prime sponsor; Tony Lee, Statewide Poverty Action Network; Bev Spears, Washington Community Action Network; Patricia Davis, Jesse Miller, Barbara O'Leary Hatfield-Liberace, citizens; Larry Evans, Legislative Aide for Larry Gossett, King County Councilmember; Lynn Domingo, Legacy of Equality in Leadership and Organizing.

CON: Joseph Brown, McCarthy Finance Inc.; Ken Weaver, Apple Valley Check Cashing.

OTHER: Mark Thompson, Moneytree, Inc.; Deb Blakeslee, citizen.