

SENATE BILL REPORT

SB 5164

As Passed Senate, February 26, 2009

Title: An act relating to placing restrictions on check cashers' and sellers' communications when collecting delinquent small loans.

Brief Description: Placing restrictions on check cashers' and sellers' communications when collecting delinquent small loans.

Sponsors: Senators Berkey, Benton, Hobbs and Parlette; by request of Department of Financial Institutions.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/21/09, 1/28/09 [DP].
Passed Senate: 2/26/09, 45-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Benton, Ranking Minority Member; Franklin, Parlette and Schoesler.

Staff: Diane Smith (786-7410)

Background: In daily commerce, check cashers and sellers are usually referred to as pay-day lenders. This profession is licensed by the Department of Financial Institutions (DFI). Pay-day lenders are prohibited from using the collection practice of threatening a delinquent borrower with criminal prosecution.

A licensee may take certain actions in furtherance of the collection of a dishonored check. A one-time fee may be charged if the borrower's check is returned unpaid. The amount of this fee is set by the director of DFI by rule.

The licensee may also institute a civil suit under the Uniform Commercial Code for collection of a dishonored check. Only recovery of the cost of collection is allowed, while attorneys' fees and any other interest or damages are not allowed.

The requirements for the licensee also apply to any collection agency to which a debt owed to the check casher or seller may be assigned.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: Additional collection practices by the licensee are prohibited. The scope of the prohibition of threats of legal action is broadened to include the threat of any legal action that the licensee may not legally take. Visits to the borrower's place of employment, impersonation of a law enforcement officer and impersonation of any other governmental official while collecting a loan are also prohibited.

Harassing, intimidating, abusive, or embarrassing communication with a borrower is prohibited. A presumption of harassing communication is established by the licensee's communication with the borrower more than three times a week; communication to the borrower at that person's place of employment more than once a week; communication at the borrower's residence between the hours of 9:00 p.m. and 7:30 a.m.; or communication made to someone other than the borrower. In determining what constitutes harassing communications, communications made to the borrower's spouse are considered to be communications to the borrower; and there are some exceptions.

Licensees are required to keep a log of communications that the licensee initiates with a borrower.

Communication includes any contact with a borrower initiated by the licensee, with some exclusions.

Appropriation: None.

Fiscal Note: Requested on January 15, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is a well worked bill that should pass. It arose from complaints of harassing and intimidating behavior by check cashers and check sellers when they collect on overdue small loans. DFI investigated 134 and 123 complaints on check cashers and sellers in 2007 and 2008, respectively. Of those, one-third were complaints of harassment or intimidation, including impersonation of a police officer threatening criminal arrest and threats to take the debtor's children away.

Persons Testifying: PRO: Deb Bortner, DFI; Yuh-Line Niou, Statewide Poverty Action Network; Richard Frank, citizen.