SENATE BILL REPORT
SB 5920

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 23, 2009

Title: An act relating to the underwriting of small loans by financial institutions holding a check cashers license and small loan endorsement by including a cap of thirty percent of the borrower's gross monthly income on the combined outstanding principal balances of all small loans.

Brief Description: Restricting the underwriting of small loans by financial institutions holding a check cashers license and small loan endorsement by including a cap of thirty percent of the borrower's gross monthly income on the combined outstanding principal balances of all small loans.

Sponsors: Senators Franklin, Berkey, Schoesler, Benton, Delvin and Shin.

Brief History:
Committee Activity: Labor, Commerce & Consumer Protection: 2/10/09, 2/23/09 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5920 be substituted therefor, and the substitute bill do pass.
Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.
Signed by Senators Honeyford and King.

Minority Report: That it be referred without recommendation.
Signed by Senator Holmquist, Ranking Minority Member.

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

---

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.

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 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 $50 for a $500 loan or up to $95 for a $900 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. 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 DFI (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 Bill (Recommended Substitute): A borrower may only borrow up to $700 and the total balance of all small loans may not exceed 30 percent of the gross monthly income of the borrower at any one time.

Authorization of a Database. DFI may develop a database system, accessible both to the agency and licensees to determine whether a consumer has any outstanding loans with other licensees, the number of small loans outstanding, and the total amount owed by the consumer on all outstanding small loans.

The licensee must update the system with the following information:

- upon the origination of a loan, the origination date, payment due date, and principal balance;
- the fact that a consumer rescinded a loan, and that loan is paid in full;
- if a check is returned unpaid, that must be noted by the end of the business day for which the licensee receives notice; and
- the fact that either a current or defaulted loan or payment plan is paid in full by cash or by check, before the end of the business day on which the check is deposited.

The database must be accessible to licensees at all times. If they system is unavailable, the vendor must provide an alternative means for licensees to access the information.

A licensee is prohibited from using the information obtained from the system to determine whether a consumer is eligible for a small loan and then market a small loan to the consumer on the basis of that information.

Personal and financial information of a borrower in the database is not subject to disclosure under the Public Records Act.

<u>Payment Plan.</u> A borrower can request a payment plan at time, without paying additional fees. For loan balances under $400, the borrower has at least 90 days to repay in equal 15-day installments; for balances between $400-$700, the borrower has at least 180 days to pay in equal 15-day installments. A borrower is considered in default after missing two consecutive payments. The licensee must return the borrower's pre-dated check upon entering a payment plan.

A small loan is not due before the borrower's next paycheck. If the borrower is going to receive a paycheck within seven days of the loan, then the loan is not due until the subsequent payday.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute): A borrower may only borrow up to a total of $700 at any time. A borrower can request a payment plan, without paying additional fees. For loan balances under $400, the borrower has at least 90 days to repay in equal 15-day installments; for $400-$700 balances, the borrower has at least 180 days to pay in equal 15-day installments. A borrower is considered in default after missing two consecutive payments. The licensee must return the borrower's pre-dated check upon entering a payment plan. It is clarified that a loan is not due before the borrower's next paycheck. If the borrower is going to receive a paycheck within seven days of the loan, then the loan is not due until the subsequent payday. An effective date of January 1, 2010, is added.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2010.

Staff Summary of Public Testimony on Original Bill: PRO: There is a role for payday lending in the community; all payday loans aren't bad. There are borrowers who sometimes need just temporary short-term help and don't have other means of help. Some licensees are involved in the communities they work in. If requirements are added that limit the loan amounts, then a database is needed for enforcement purposes.

OTHER: Databases help with enforcement and provide information for public policy purposes. Unless there is a database, it's hard to know what is really going on. Eight other states have a database system and others are considering adding a database. Florida has the oldest database system. They did a five-year study (2002-2007) and found that 30 percent of borrowers no longer use payday lending and 66 percent no longer use payday loans after five years. Only 4.4 percent of borrowers are 65 or older, in a state with the highest population with those over 65.

Persons Testifying: PRO: Senator Franklin, prime sponsor; Dennis Bassford, Angela Toussant, Regina Alexander, Pamela Fann, Oscar Eason, Chris Guillen, Connie Proctor, Moneytree and Financial Service Centers of Washington.

OTHER: Nathan Groff, Veritec.