
HOUSE BILL 1073

State of Washington

61st Legislature

2009 Regular Session

By Representatives Appleton and Nelson

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1 AN ACT Relating to small loans; amending RCW 31.45.010, 31.45.073,
2 31.45.084, and 31.45.088; 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 31.45.010 and 2003 c 86 s 1 are each amended to read
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

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

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

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

15 (4) "Check" means the same as defined in RCW 62A.3-104(f) and, for
16 purposes of conducting the business of making small loans, includes
17 other electronic forms of payment, including stored value cards,
18 internet transfers, and automated clearing house transactions.

19 (5) "Check casher" means an individual, partnership, unincorporated
20 association, or corporation that, for compensation, engages, in whole
21 or in part, in the business of cashing checks, drafts, money orders, or
22 other commercial paper serving the same purpose.

23 (6) "Check seller" means an individual, partnership, unincorporated
24 association, or corporation that, for compensation, engages, in whole
25 or in part, in the business of or selling checks, drafts, money orders,
26 or other commercial paper serving the same purpose.

27 (7) "Collateral" means the same as defined in chapter 62A.9A RCW.

28 (8) "Controlling person" means a person owning or controlling ten
29 percent or more of the total outstanding shares of the applicant or
30 licensee, if the applicant or licensee is a corporation, and a member
31 who owns ten percent or more of a limited liability company or limited
32 liability partnership.

33 (9) "Default" means the borrower's failure to repay the small loan
34 in compliance with the terms contained in the small loan agreement or
35 note or failure to make payments in compliance with a loan payment
36 plan.

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

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

3 (12) "Licensee" means a check casher or seller licensed by the
4 director to engage in business in accordance with this chapter. For
5 purposes of the enforcement powers of this chapter, including the power
6 to issue cease and desist orders under RCW 31.45.110, "licensee" also
7 means a check casher or seller who fails to obtain the license required
8 by this chapter.

9 (13) "Origination date" means the date upon which the borrower and
10 the licensee initiate a small loan transaction.

11 (14) "Outstanding principal balance" of a small loan means any of
12 the principal amount that has not been paid by the borrower.

13 (15) "Paid" means that moment in time when the licensee deposits
14 the borrower's check or accepts cash for the full amount owing on a
15 valid small loan.

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

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

21 (18) "Rescission" means annulling the loan contract and, with
22 respect to the small loan contract, returning the borrower and the
23 licensee to their financial condition prior to the origination date of
24 the loan.

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

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

31 ~~(21))~~ "Termination date" means the date upon which payment for the
32 small loan transaction is due or paid to the licensee, whichever occurs
33 first.

34 ~~((22))~~ (21) "Total of payments" means the principal amount of the
35 small loan plus all fees or interest charged on the loan.

36 ~~((23))~~ (22) "Trade secret" means the same as defined in RCW
37 19.108.010.

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

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

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

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

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

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

12 ~~((+5))~~ (6) No person may at any time cash or advance any moneys on
13 a postdated check or draft in excess of the amount of goods or services
14 purchased without first obtaining a small loan endorsement to a check
15 casher or check seller license.

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

19 **Sec. 4.** RCW 31.45.084 and 2003 c 86 s 12 are each amended to read
20 as follows:

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

1 payment plan by the borrower. Each licensee shall conspicuously
2 disclose to each borrower in the small loan agreement or small loan
3 note that the borrower has access to such a payment plan (~~after four~~
4 ~~successive loans~~). A licensee's violation of such a payment plan
5 constitutes a violation of this chapter.

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

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

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

20 **Sec. 5.** RCW 31.45.088 and 2003 c 86 s 14 are each amended to read
21 as follows:

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

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

31 (3) When making a small loan, each licensee shall disclose to the
32 borrower the terms of the small loan, including the principal amount of
33 the small loan, the total of payments of the small loan, the fee or
34 interest rate charged by the licensee on the small loan, the cost of
35 the loan expressed as an amount of dollars per hundred dollars
36 borrowed, and the annual percentage rate resulting from this fee or
37 interest rate.

1 (4) When making a small loan, disclosure of the terms of the small
2 loan in compliance with all applicable state and federal laws and
3 regulations, including the truth in lending act, 15 U.S.C. Sec. 1601
4 and Regulation Z, 12 C.F.R. ((~~Sec. [Part]~~)) Part 226 constitutes
5 compliance with subsection (3) of this section.

6 NEW SECTION. **Sec. 6.** The director of the department of financial
7 institutions shall study the merits of implementing a real-time
8 database that allows licensees to verify if a consumer has an
9 outstanding small loan. The director shall study the cost of a
10 database and the effectiveness of a database in limiting the
11 possibility of an excessive number of contemporaneous loans. The
12 director must provide the findings of this study to the committees of
13 the legislature that address financial regulation no later than
14 November 30, 2009. The director may include recommendations based upon
15 the study.

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