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HOUSE BILL 1425

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Appleton, Nelson, Seaquist, Hasegawa, Morrell, Haigh, Dunshee, Cody, Dickerson, Green, Flannigan, Kagi, Miloscia, Rolfes, and Van De Wege

Read first time 01/21/09.      Referred to Committee on Financial Institutions & Insurance.

1            AN ACT Relating to prohibiting small loans; amending RCW 31.45.010,  
2 31.45.030, 31.45.040, 31.45.050, 31.45.070, 31.45.105, and 42.56.450;  
3 and repealing RCW 31.45.073, 31.45.077, 31.45.079, 31.45.082,  
4 31.45.084, 31.45.086, 31.45.088, and 31.45.210.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 31.45.010 and 2003 c 86 s 1 are each amended to read  
7 as follows:

8            Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

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

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

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

17            ~~(4) "Check" means the same as defined in RCW 62A.3-104(f) and, for  
18 purposes of conducting the business of making small loans, includes~~

1 ~~other electronic forms of payment, including stored value cards,~~  
2 ~~internet transfers, and automated clearing house transactions.~~

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

8 ~~((6))~~ (3) "Check seller" means an individual, partnership,  
9 unincorporated association, or corporation that, for compensation,  
10 engages, in whole or in part, in the business of or selling checks,  
11 drafts, money orders, or other commercial paper serving the same  
12 purpose.

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

14 ~~(8))~~ (4) "Controlling person" means a person owning or controlling  
15 ten percent or more of the total outstanding shares of the applicant or  
16 licensee, if the applicant or licensee is a corporation, and a member  
17 who owns ten percent or more of a limited liability company or limited  
18 liability partnership.

19 ~~((9) "Default" means the borrower's failure to repay the small~~  
20 ~~loan in compliance with the terms contained in the small loan agreement~~  
21 ~~or note or failure to make payments in compliance with a loan payment~~  
22 ~~plan.~~

23 ~~(10))~~ (5) "Director" means the director of financial institutions.

24 ~~((11))~~ (6) "Financial institution" means a commercial bank,  
25 savings bank, savings and loan association, or credit union.

26 ~~((12))~~ (7) "Licensee" means a check casher or seller licensed by  
27 the director to engage in business in accordance with this chapter.  
28 For purposes of the enforcement powers of this chapter, including the  
29 power to issue cease and desist orders under RCW 31.45.110, "licensee"  
30 also means a check casher or seller who fails to obtain the license  
31 required by this chapter.

32 ~~((13) "Origination date" means the date upon which the borrower~~  
33 ~~and the licensee initiate a small loan transaction.~~

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

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

1       ~~(16))~~ (8) "Person" means an individual, partnership, association,  
2 limited liability company, limited liability partnership, trust,  
3 corporation, and any other legal entity.

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

6       ~~(18) "Rescission" means annulling the loan contract and, with~~  
7 ~~respect to the small loan contract, returning the borrower and the~~  
8 ~~licensee to their financial condition prior to the origination date of~~  
9 ~~the loan.~~

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

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

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

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

21       ~~(23))~~ (9) "Trade secret" means the same as defined in RCW  
22 19.108.010.

23       **Sec. 2.** RCW 31.45.030 and 2005 c 274 s 255 are each amended to  
24 read as follows:

25       (1) Except as provided in RCW 31.45.020, no check casher or seller  
26 may engage in business without first obtaining a license from the  
27 director in accordance with this chapter. A license is required for  
28 each location where a licensee engages in the business of cashing or  
29 selling checks or drafts.

30       (2) Each application for a license shall be in writing in a form  
31 prescribed by the director and shall contain the following information:

32       (a) The legal name, residence, and business address of the  
33 applicant and, if the applicant is a partnership, association, or  
34 corporation, of every member, officer, and director thereof;

35       (b) The location where the initial registered office of the  
36 applicant will be located in this state;

1 (c) The complete address of any other locations at which the  
2 applicant proposes to engage in business as a check casher or seller;  
3 and

4 (d) Such other data, financial statements, and pertinent  
5 information as the director may require with respect to the applicant,  
6 its directors, trustees, officers, members, or agents.

7 (3) Any information in the application regarding the personal  
8 residential address or telephone number of the applicant, and any trade  
9 secret as defined in RCW 19.108.010 including any financial statement  
10 that is a trade secret, is exempt from the public records disclosure  
11 requirements of chapter 42.56 RCW.

12 (4) The application shall be filed together with an investigation  
13 and supervision fee established by rule by the director. Such fees  
14 collected shall be deposited to the credit of the financial services  
15 regulation fund in accordance with RCW 43.320.110.

16 (5)(a) Before granting a license to sell checks, drafts, or money  
17 orders under this chapter, the director shall require that the licensee  
18 file with the director a surety bond running to the state of  
19 Washington, which bond shall be issued by a surety insurer which meets  
20 the requirements of chapter 48.28 RCW, and be in a format acceptable to  
21 the director. The director shall adopt rules to determine the penal  
22 sum of the bond that shall be filed by each licensee. The bond shall  
23 be conditioned upon the licensee paying all persons who purchase  
24 checks, drafts, or money orders from the licensee the face value of any  
25 check, draft, or money order which is dishonored by the drawee bank,  
26 savings bank, or savings and loan association due to insufficient funds  
27 or by reason of the account having been closed. The bond shall only be  
28 liable for the face value of the dishonored check, draft, or money  
29 order, and shall not be liable for any interest or consequential  
30 damages.

31 ~~(b) ((Before granting a small loan endorsement under this chapter,~~  
32 ~~the director shall require that the licensee file with the director a~~  
33 ~~surety bond, in a format acceptable to the director, issued by a surety~~  
34 ~~insurer that meets the requirements of chapter 48.28 RCW. The director~~  
35 ~~shall adopt rules to determine the penal sum of the bond that shall be~~  
36 ~~filed by each licensee. A licensee who wishes to engage in both check~~  
37 ~~selling and making small loans may combine the penal sums of the~~  
38 ~~bonding requirements and file one bond in a form acceptable to the~~

1 ~~director. The bond shall run to the state of Washington as obligee,~~  
2 ~~and shall run to the benefit of the state and any person or persons who~~  
3 ~~suffer loss by reason of the licensee's violation of this chapter or~~  
4 ~~any rules adopted under this chapter. The bond shall only be liable~~  
5 ~~for damages suffered by borrowers as a result of the licensee's~~  
6 ~~violation of this chapter or rules adopted under this chapter, and~~  
7 ~~shall not be liable for any interest or consequential damages.~~

8 (e)) The bond shall be continuous and may be canceled by the  
9 surety upon the surety giving written notice to the director and  
10 licensee of its intent to cancel the bond. The cancellation is  
11 effective thirty days after the notice is received by the director.  
12 Whether or not the bond is renewed, continued, reinstated, reissued, or  
13 otherwise extended, replaced, or modified, including increases or  
14 decreases in the penal sum, it shall be considered one continuous  
15 obligation, and the surety upon the bond shall not be liable in an  
16 aggregate or cumulative amount exceeding the penal sum set forth on the  
17 face of the bond. In no event shall the penal sum, or any portion  
18 thereof, at two or more points in time be added together in determining  
19 the surety's liability. The bond shall not be liable for any liability  
20 of the licensee for tortious acts, whether or not such liability is  
21 imposed by statute or common law, or is imposed by contract. The bond  
22 shall not be a substitute or supplement to any liability or other  
23 insurance required by law or by the contract. If the surety desires to  
24 make payment without awaiting court action against it, the penal sum of  
25 the bond shall be reduced to the extent of any payment made by the  
26 surety in good faith under the bond.

27 ((d)) (c) Any person who is a purchaser of a check, draft, or  
28 money order from the licensee having a claim against the licensee for  
29 the dishonor of any check, draft, or money order by the drawee bank,  
30 savings bank, or savings and loan association due to insufficient funds  
31 or by reason of the account having been closed, or who obtained a small  
32 loan from the licensee and was damaged by the licensee's violation of  
33 this chapter or rules adopted under this chapter, may bring suit upon  
34 such bond or deposit in the superior court of the county in which the  
35 check, draft, or money order was purchased, or in the superior court of  
36 a county in which the licensee maintains a place of business.  
37 Jurisdiction shall be exclusively in the superior court. Any such  
38 action must be brought not later than one year after the dishonor of

1 the check, draft, or money order on which the claim is based. In the  
2 event valid claims against a bond or deposit exceed the amount of the  
3 bond or deposit, each claimant shall only be entitled to a pro rata  
4 amount, based on the amount of the claim as it is valid against the  
5 bond, or deposit, without regard to the date of filing of any claim or  
6 action.

7 ~~((e))~~ (d) In lieu of the surety bond required by this section,  
8 the applicant for a check seller license may file with the director a  
9 deposit consisting of cash or other security acceptable to the director  
10 in an amount equal to the penal sum of the required bond. ~~((In lieu of  
11 the surety bond required by this section, the applicant for a small  
12 loan endorsement may file with the director a deposit consisting of  
13 cash or other security acceptable to the director in an amount equal to  
14 the penal sum of the required bond, or may demonstrate to the director  
15 net worth in excess of three times the amount of the penal sum of the  
16 required bond.))~~

17 The director may adopt rules necessary for the proper  
18 administration of the security or to establish reporting requirements  
19 to ensure that the net worth requirements continue to be met. A  
20 deposit given instead of the bond required by this section is not an  
21 asset of the licensee for the purpose of complying with the liquid  
22 asset provisions of this chapter. A deposit given instead of the bond  
23 required by this section is a fund held in trust for the benefit of  
24 eligible claimants under this section and is not an asset of the estate  
25 of any licensee that seeks protection voluntarily or involuntarily  
26 under the bankruptcy laws of the United States.

27 ~~((f))~~ (e) Such security may be sold by the director at public  
28 auction if it becomes necessary to satisfy the requirements of this  
29 chapter. Notice of the sale shall be served upon the licensee who  
30 placed the security personally or by mail. If notice is served by  
31 mail, service shall be addressed to the licensee at its address as it  
32 appears in the records of the director. Bearer bonds of the United  
33 States or the state of Washington without a prevailing market price  
34 must be sold at public auction. Such bonds having a prevailing market  
35 price may be sold at private sale not lower than the prevailing market  
36 price. Upon any sale, any surplus above amounts due shall be returned  
37 to the licensee, and the licensee shall deposit with the director  
38 additional security sufficient to meet the amount required by the

1 director. A deposit given instead of the bond required by this section  
2 shall not be deemed an asset of the licensee for the purpose of  
3 complying with the liquid asset provisions of this chapter.

4 **Sec. 3.** RCW 31.45.040 and 2003 c 86 s 4 are each amended to read  
5 as follows:

6 (1) The director shall conduct an investigation of every applicant  
7 to determine the financial responsibility, experience, character, and  
8 general fitness of the applicant. The director shall issue the  
9 applicant a license to engage in the business of cashing or selling  
10 checks, or both, (~~(or a small loan endorsement,~~) if the director  
11 determines to his or her satisfaction that:

12 (a) The applicant has satisfied the requirements of RCW 31.45.030;

13 (b) The applicant is financially responsible and appears to be able  
14 to conduct the business of cashing or selling checks (~~(or making small~~  
15 ~~loans)~~) in an honest, fair, and efficient manner with the confidence  
16 and trust of the community; and

17 (c) The applicant has the required bonds, or has provided an  
18 acceptable alternative form of financial security.

19 (2) The director may refuse to issue a license (~~(or small loan~~  
20 ~~endorsement)~~) if he or she finds that the applicant, or any person who  
21 is a director, officer, partner, agent, sole proprietor, owner, or  
22 controlling person of the applicant, has been convicted of a felony in  
23 any jurisdiction within seven years of filing the present application  
24 or is associating or consorting with any person who has been convicted  
25 of a felony in any jurisdiction within seven years of filing the  
26 present application. The term "substantial stockholder" as used in  
27 this subsection, means a person owning or controlling ten percent or  
28 more of the total outstanding shares of the applicant corporation.

29 (3) A license (~~(or small loan endorsement)~~) may not be issued to an  
30 applicant:

31 (a) Whose license to conduct business under this chapter, or any  
32 similar statute in any other jurisdiction, has been suspended or  
33 revoked within five years of the filing of the present application;

34 (b) Who has been banned from the industry by an administrative  
35 order issued by the director or the director's designee, for the period  
36 specified in the administrative order; or

1 (c) When any person who is a sole proprietor, owner, director,  
2 officer, partner, agent, or controlling person of the applicant has  
3 been banned from the industry in an administrative order issued by the  
4 director, for the period specified in the administrative order.

5 (4) A license (~~(or small loan endorsement)~~) issued under this  
6 chapter shall be conspicuously posted in the place of business of the  
7 licensee. The license is not transferable or assignable.

8 (5) A license (~~(or small loan endorsement)~~) issued in accordance  
9 with this chapter remains in force and effect until surrendered,  
10 suspended, or revoked, or until the license expires as a result of  
11 nonpayment of the annual assessment fee.

12 **Sec. 4.** RCW 31.45.050 and 2003 c 86 s 5 are each amended to read  
13 as follows:

14 (1) Each applicant and licensee shall pay to the director an  
15 investigation or examination fee as established in rule and an annual  
16 assessment fee for the coming year in an amount determined by rule as  
17 necessary to cover the operation of the program. The annual assessment  
18 fee is due upon the annual assessment fee due date as established in  
19 rule. Nonpayment of the annual assessment fee may result in expiration  
20 of the license as provided in subsection (2) of this section. In  
21 establishing the fees, the director shall (~~(differentiate between check~~  
22 ~~cashing and check selling and making small loans, and)~~) consider at  
23 least the volume of business, level of risk, and potential harm to the  
24 public related to each activity. The fees collected shall be deposited  
25 to the credit of the financial services regulation fund in accordance  
26 with RCW 43.320.110.

27 (2) If a licensee does not pay its annual assessment fee by the  
28 annual assessment fee due date as specified in rule, the director or  
29 the director's designee shall send the licensee a notice of suspension  
30 and assess the licensee a late fee not to exceed twenty-five percent of  
31 the annual assessment fee as established in rule by the director. The  
32 licensee's payment of both the annual assessment fee and the late fee  
33 must arrive in the department's offices by 5:00 p.m. on the tenth day  
34 after the annual assessment fee due date, unless the department is not  
35 open for business on that date, in which case the licensee's payment of  
36 both the annual assessment fee and the late fee must arrive in the  
37 department's offices by 5:00 p.m. on the next occurring day that the



1 department is open for business. If the payment of both the annual  
2 assessment fee and the late fee does not arrive prior to such time and  
3 date, then the expiration of the licensee's license is effective at  
4 5:00 p.m. on the thirtieth day after the assessment fee due date. The  
5 director or the director's designee may reinstate the license if,  
6 within twenty days after the effective date of expiration, the  
7 licensee:

8 (a) Pays both the annual assessment fee and the late fee; and

9 (b) Attests under penalty of perjury that it did not engage in  
10 conduct requiring a license under this chapter during the period its  
11 license was expired, as confirmed by an investigation by the director  
12 or the director's designee.

13 (3) If a licensee intends to do business at a new location, to  
14 close an existing place of business, or to relocate an existing place  
15 of business, the licensee shall provide written notification of that  
16 intention to the director no less than thirty days before the proposed  
17 establishing, closing, or moving of a place of business.

18 **Sec. 5.** RCW 31.45.070 and 2003 c 86 s 7 are each amended to read  
19 as follows:

20 (1) No licensee may engage in a loan business or the negotiation of  
21 loans or the discounting of notes, bills of exchange, checks, or other  
22 evidences of debt on the same premises where a check cashing or selling  
23 business is conducted, unless the licensee:

24 (a) Is conducting the activities of pawnbroker as defined in RCW  
25 19.60.010;

26 (b) Is a properly licensed consumer loan company under chapter  
27 31.04 RCW; or

28 (c) Is conducting other lending activity permitted in the state of  
29 Washington(~~or~~

30 ~~(d) Has a small loan endorsement~~)).

31 (2) Except as otherwise permitted in this chapter, no licensee may  
32 at any time cash (~~or advance any moneys on~~) a postdated check or  
33 draft. However, a licensee may cash a check payable on the first  
34 banking day following the date of cashing if:

35 (a) The check is drawn by the United States, the state of  
36 Washington, or any political subdivision of the state, or by any  
37 department or agency of the state or its subdivisions; or

1 (b) The check is a payroll check drawn by an employer to the order  
2 of its employee in payment for services performed by the employee.

3 (3) Except as otherwise permitted in this chapter, no licensee may  
4 agree to hold a check or draft for later deposit. A licensee shall  
5 deposit all checks and drafts cashed by the licensee as soon as  
6 practicable.

7 (4) No licensee may issue or cause to be issued any check, draft,  
8 or money order, or other commercial paper serving the same purpose,  
9 that is drawn upon the trust account of a licensee without concurrently  
10 receiving the full principal amount, in cash, or by check, draft, or  
11 money order from a third party believed to be valid.

12 (5) No licensee may advertise, print, display, publish, distribute,  
13 or broadcast or cause or permit to be advertised, printed, displayed,  
14 published, distributed, or broadcast, any statement or representation  
15 that is false, misleading, or deceptive, or that omits material  
16 information, or that refers to the supervision of the licensee by the  
17 state of Washington or any department or official of the state.

18 (6) Each licensee shall comply with all applicable federal statutes  
19 governing currency transaction reporting.

20 **Sec. 6.** RCW 31.45.105 and 2007 c 81 s 1 are each amended to read  
21 as follows:

22 (1) It is a violation of this chapter for any person subject to  
23 this chapter to:

24 (a) Directly or indirectly employ any scheme, device, or artifice  
25 to defraud or mislead any borrower, to defraud or mislead any lender,  
26 or to defraud or mislead any person;

27 (b) Directly or indirectly engage in any unfair or deceptive  
28 practice toward any person; and

29 (c) Directly or indirectly obtain property by fraud or  
30 misrepresentation(~~(+and~~

31 ~~(d) Make a small loan to any person physically located in~~  
32 ~~Washington through use of the internet, facsimile, telephone, kiosk, or~~  
33 ~~other means without first obtaining a small loan endorsement)).~~

34 (2) In addition to any other penalties, any transaction in  
35 violation of subsection (1) of this section is uncollectible and  
36 unenforceable.

1       **Sec. 7.** RCW 42.56.450 and 2005 c 274 s 425 are each amended to  
2 read as follows:

3       Information in an application for licensing (~~(or a small loan~~  
4 ~~endorsement)~~) under chapter 31.45 RCW regarding the personal  
5 residential address, telephone number of the applicant, or financial  
6 statement is exempt from disclosure under this chapter.

7       NEW SECTION. **Sec. 8.** The following acts or parts of acts are each  
8 repealed:

9       (1) RCW 31.45.073 (Making small loans--Endorsement required--  
10 Termination date--Maximum amount--Interest--Fees--Postdated check or  
11 draft as security) and 2003 c 86 s 8 & 1995 c 18 s 2;

12       (2) RCW 31.45.077 (Small loan endorsement--Application--Form--  
13 Information--Exemption from disclosure--Fees) and 2005 c 274 s 256,  
14 2003 c 86 s 9, 2001 c 177 s 13, & 1995 c 18 s 3;

15       (3) RCW 31.45.079 (Making small loans--Agent for a licensee or  
16 exempt entity--Federal preemption) and 2003 c 86 s 10;

17       (4) RCW 31.45.082 (Delinquent small loan--Collection by licensee or  
18 third party) and 2003 c 86 s 11;

19       (5) RCW 31.45.084 (Small loan payment plan--Terms--Restrictions)  
20 and 2003 c 86 s 12;

21       (6) RCW 31.45.086 (Small loans--Right of rescission) and 2003 c 86  
22 s 13;

23       (7) RCW 31.45.088 (Small loans--Disclosure requirements--  
24 Advertising--Making loan) and 2003 c 86 s 14; and

25       (8) RCW 31.45.210 (Military borrowers--Licensee's duty--Definition)  
26 and 2005 c 256 s 1.

--- END ---