
ENGROSSED SUBSTITUTE HOUSE BILL 1709

State of Washington

61st Legislature

2009 Regular Session

By House Financial Institutions & Insurance (originally sponsored by Representatives Nelson, White, Cody, Carlyle, Orwall, McCoy, Darneille, and Ormsby)

READ FIRST TIME 02/19/09.

1 AN ACT Relating to fee and installment plan assistance for
2 borrowers at risk of default on small loans; amending RCW 31.45.010,
3 31.45.073, 31.45.084, and 42.56.230; adding new sections to chapter
4 31.45 RCW; creating new sections; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that some small loan
7 borrowers are unable to pay the entire loaned amount when it is due.
8 Many of these borrowers take out multiple loans to pay off the original
9 borrowed sum.

10 It is the legislature's intent to reduce or limit the number of
11 borrowers taking out multiple loans by providing for installment plans
12 that give a borrower a better opportunity to pay off their original
13 small loan without having to resort to taking out a subsequent loan or
14 loans.

15 This act shall be liberally construed to effectuate the
16 legislature's intent to protect borrowers.

17 **Sec. 2.** RCW 31.45.010 and 2003 c 86 s 1 are each amended to read
18 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

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

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

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

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

23 (8) "Controlling person" means a person owning or controlling ten
24 percent or more of the total outstanding shares of the applicant or
25 licensee, if the applicant or licensee is a corporation, and a member
26 who owns ten percent or more of a limited liability company or limited
27 liability partnership.

28 (9) "Default" means the borrower's failure to repay the small loan
29 in compliance with the terms contained in the small loan agreement or
30 note or failure to ~~((make payments in compliance with a loan payment
31 plan))~~ pay any installment plan payment on an installment plan within
32 ten days after the date upon which the installment was scheduled to be
33 paid.

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

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

37 (12) "Installment plan" is a contract between a licensee and

1 borrower that provides that the loaned amount will be repaid in
2 substantially equal installments scheduled on or after a borrower's pay
3 dates and no less than fourteen days apart.

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

10 ~~((13))~~ (14) "Loaned amount" means the outstanding principal
11 balance and any fees authorized under RCW 31.45.073 that have not been
12 paid by the borrower.

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

15 ~~((14))~~ (16) "Outstanding principal balance" of a small loan means
16 any of the principal amount that has not been paid by the borrower.

17 ~~((15))~~ (17) "Paid" means that moment in time when the licensee
18 deposits the borrower's check or accepts cash for the full amount owing
19 on a valid small loan. If the borrower's check is returned by the
20 borrower's bank for insufficient funds, the licensee shall not consider
21 the loan paid.

22 ~~((16))~~ (18) "Person" means an individual, partnership,
23 association, limited liability company, limited liability partnership,
24 trust, corporation, and any other legal entity.

25 ~~((17))~~ (19) "Principal" means the loan proceeds advanced for the
26 benefit of the borrower in a small loan, excluding any fee or interest
27 charge.

28 ~~((18))~~ (20) "Rescission" means annulling the loan contract and,
29 with respect to the small loan contract, returning the borrower and the
30 licensee to their financial condition prior to the origination date of
31 the loan.

32 ~~((19))~~ (21) "Small loan" means a loan of up to the maximum amount
33 and for a period of time up to the maximum term specified in RCW
34 31.45.073.

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

1 ~~(21))~~ (22) "Termination date" means the date upon which payment
2 for the small loan transaction is due or paid to the licensee,
3 whichever occurs first.

4 ~~((22))~~ (23) "Total of payments" means the principal amount of the
5 small loan plus all fees or interest charged on the loan.

6 ~~((23))~~ (24) "Trade secret" means the same as defined in RCW
7 19.108.010.

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

10 (1) No licensee may engage in the business of making small loans
11 without first obtaining a small loan endorsement to its license from
12 the director in accordance with this chapter. An endorsement will be
13 required for each location where a licensee engages in the business of
14 making small loans, but a small loan endorsement may authorize a
15 licensee to make small loans at a location different than the licensed
16 locations where it cashes or sells checks. A licensee may have more
17 than one endorsement.

18 (2) A licensee must set the due date of a small loan on or after
19 the date of the borrower's next pay date. If a borrower's next pay
20 date is within seven days of taking out the loan, a licensee must set
21 the due date of a small loan on or after the borrower's second pay date
22 after the date the small loan is made. The termination date of a small
23 loan may not exceed the origination date of that same small loan by
24 more than forty-five days, including weekends and holidays, unless the
25 term of the loan is extended by agreement of both the borrower and the
26 licensee and no additional fee or interest is charged. The maximum
27 principal amount of any small loan, or the outstanding principal
28 balances of all small loans made by ~~((a))~~ all licensees to a single
29 borrower at any one time, may not exceed seven hundred dollars or
30 thirty percent of the gross monthly income of the borrower, whichever
31 is lower. A licensee is prohibited from making a small loan to a
32 borrower who is in default on another small loan until after that loan
33 is paid in full or two years have passed from the origination date of
34 the small loan, whichever occurs first.

35 (3) A licensee is prohibited from making a small loan to a borrower
36 in an installment plan with any licensee until after the plan is paid

1 in full or two years have passed from the origination date of the
2 installment plan, whichever occurs first.

3 (4) A borrower is prohibited from receiving more than eight small
4 loans from all licensees in any twelve-month period. A licensee is
5 prohibited from making a small loan to a borrower if making that small
6 loan would result in a borrower receiving more than eight small loans
7 from all licensees in any twelve-month period.

8 (5) A licensee that has obtained the required small loan
9 endorsement may charge interest or fees for small loans not to exceed
10 in the aggregate fifteen percent of the first five hundred dollars of
11 principal. If the principal exceeds five hundred dollars, a licensee
12 may charge interest or fees not to exceed in the aggregate ten percent
13 of that portion of the principal in excess of five hundred dollars. If
14 a licensee makes more than one loan to a single borrower, and the
15 aggregated principal of all loans made to that borrower exceeds five
16 hundred dollars at any one time, the licensee may charge interest or
17 fees not to exceed in the aggregate ten percent on that portion of the
18 aggregated principal of all loans at any one time that is in excess of
19 five hundred dollars. The director may determine by rule which fees,
20 if any, are not subject to the interest or fee limitations described in
21 this section. It is a violation of this chapter for any licensee to
22 knowingly loan to a single borrower at any one time, in a single loan
23 or in the aggregate, more than the maximum principal amount described
24 in this section.

25 ~~((+4))~~ (6) In connection with making a small loan, a licensee may
26 advance moneys on the security of a postdated check. The licensee may
27 not accept any other property, title to property, or other evidence of
28 ownership of property as collateral for a small loan. The licensee may
29 accept only one postdated check per loan as security for the loan. A
30 licensee may permit a borrower to redeem a postdated check with a
31 payment of cash or the equivalent of cash. The licensee may disburse
32 the proceeds of a small loan in cash, in the form of a check, or in the
33 form of the electronic equivalent of cash or a check.

34 ~~((+5))~~ (7) No person may at any time cash or advance any moneys on
35 a postdated check or draft in excess of the amount of goods or services
36 purchased without first obtaining a small loan endorsement to a check
37 cashier or check seller license.

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

3 (1) ~~((A licensee and borrower may agree to a payment plan for a
4 small loan at any time. After four successive loans and prior to
5 default upon the last loan, each))~~ If a borrower notifies a licensee
6 that the borrower will be or is unable to repay a loan when it is due,
7 the licensee must inform the borrower that the borrower may convert
8 their small loan to ~~((a payment))~~ an installment plan. The licensee
9 must convert the small loan to an installment plan at the borrower's
10 request. Each agreement for a loan ~~((payment))~~ installment plan must
11 be in writing and acknowledged by both the borrower and the licensee.
12 ~~((The licensee may charge the borrower, at the time both parties enter
13 into the payment plan, a one time fee for the payment plan in an amount
14 up to the fee or interest on the outstanding principal of the loan as
15 allowed under RCW 31.45.073(3).))~~ The licensee may not assess any
16 other fee, interest charge, or other charge on the borrower as a result
17 of converting the small loan into ~~((a payment))~~ an installment plan.
18 This ~~((payment))~~ installment plan must provide for the payment of the
19 total of payments due on the small loan over a period not less than
20 ~~((sixty))~~ ninety days ~~((in three or more payments, unless the borrower
21 and licensee agree to a shorter payment period))~~ for a loan amount of
22 up to and including four hundred dollars. For a loaned amount over
23 four hundred dollars, the installment plan must be a period not less
24 than one hundred eighty days. The borrower may pay the total of
25 ~~((payments))~~ installments at any time. The licensee may not charge any
26 penalty, fee, or charge to the borrower for prepayment of the loan
27 ~~((payment))~~ installment plan by the borrower. Each licensee shall
28 conspicuously disclose to each borrower in the small loan agreement or
29 small loan note that the borrower has access to such ~~((a payment))~~ an
30 installment plan ~~((after four successive loans))~~. A licensee's
31 violation of such ~~((a payment))~~ an installment plan constitutes a
32 violation of this chapter.

33 (2) The licensee ~~((may take))~~ must return any postdated checks that
34 the borrower has given to the licensee for the original small loan at
35 the initiation of the ~~((payment))~~ installment plan ~~((for the payments
36 agreed to under the plan. If any check accepted by the licensee as
37 payment under the payment plan is dishonored, the licensee may not
38 charge the borrower any fee for the dishonored check))~~.

1 (3) (~~If the borrower defaults on the payment plan, the licensee~~
2 ~~may initiate action to collect the total of payments under RCW~~
3 ~~31.45.082.~~) A licensee may take postdated checks for installment plan
4 payments at the time the installment plan is originated. If any check
5 accepted as payment under the installment plan is dishonored, the
6 licensee may not charge the borrower any fee for the dishonored check.
7 If a borrower defaults on the installment plan, the licensee may charge
8 the borrower a one-time (~~payment~~) installment plan default fee of
9 twenty-five dollars.

10 (4) If the licensee enters into (~~a payment~~) an installment plan
11 with the borrower through an accredited third party, with certified
12 credit counselors, that is representing the borrower, the licensee's
13 failure to comply with the terms of that (~~payment~~) installment plan
14 constitutes a violation of this chapter.

15 NEW SECTION. Sec. 5. A new section is added to chapter 31.45 RCW
16 to read as follows:

17 (1)(a) In addition to other disclosures required by this chapter,
18 the application for a small loan must include a statement that is
19 substantially similar to the following: "At the time you repay this
20 loan, you should have sufficient funds to meet your other financial
21 obligations. If you cannot pay other bills because you are paying off
22 this debt, you should go into the installment plan offered in
23 connection with this loan."

24 (b) The statement in (a) of this subsection must be on the front
25 page of the loan application and must be in at least twelve point type.

26 (2) The director may adopt rules to implement this section.

27 NEW SECTION. Sec. 6. A new section is added to chapter 31.45 RCW
28 to read as follows:

29 (1) The director must, by contract with a vendor or service
30 provider or otherwise, develop and implement a system by means of which
31 a licensee may determine:

32 (a) Whether a consumer has an outstanding small loan;

33 (b) The number of small loans the consumer has outstanding;

34 (c) Whether the borrower is eligible for a loan under RCW
35 31.45.073;

36 (d) Whether the borrower is in an installment plan; and

1 (e) Any other information necessary to comply with chapter 31.45
2 RCW.

3 (2) The director may specify the form and contents of the system by
4 rule. Any system must provide that the information entered into or
5 stored by the system is:

6 (a) Accessible to and usable by licensees and the director from any
7 location in this state; and

8 (b) Secured against public disclosure, tampering, theft, or
9 unauthorized acquisition or use.

10 (3) If the system described in subsection (1) of this section is
11 developed and implemented, a licensee making small loans under chapter
12 31.45 RCW must enter or update the required information in subsection
13 (1) of this section at the time that the small loan transaction is
14 conducted by the licensee.

15 (4) A licensee must continue to enter and update all required
16 information for any loans subject to chapter 31.45 RCW that are
17 outstanding or have not yet expired after the date on which the
18 licensee no longer has the license or small loan endorsement required
19 by this chapter. Within ten business days after ceasing to make loans
20 subject to chapter 31.45 RCW, the licensee must submit a plan for
21 continuing compliance with this subsection to the director for
22 approval. The director must promptly approve or disapprove the plan
23 and may require the licensee to submit a new or modified plan that
24 ensures compliance with this subsection.

25 (5) If the system described in subsection (1) of this section is
26 developed and implemented, the director shall adopt rules to set the
27 fees licensees shall pay to the vendor or service provider for the
28 operation and administration of the system and the administration of
29 this chapter by the department.

30 (6) The director shall adopt rules establishing standards for the
31 retention, archiving, and deletion of information entered into or
32 stored by the system described in subsection (1) of this section.

33 (7) The information in the system described in subsection (1) of
34 this section is not subject to public inspection or disclosure under
35 chapter 42.56 RCW.

36 NEW SECTION. **Sec. 7.** A new section is added to chapter 31.45 RCW
37 to read as follows:

1 (1) The director must collect and submit the following information
2 in a report to the financial services committees of the senate and
3 house of representatives:

4 (a) The number of borrowers entered into an installment plan since
5 the effective date of this section;

6 (b) How the number of borrowers in installment plans compares to
7 the number of borrowers in installment plans in years previous to the
8 effective date of this section;

9 (c) The number of borrowers who have defaulted since the effective
10 date of this section;

11 (d) If known on the effective date of this section, how the number
12 of borrowers who have defaulted compares to the number of borrowers who
13 defaulted in years previous to the effective date of this section; and

14 (e) Any other information that the director believes is relevant or
15 useful.

16 (2) Failure to provide the director information required by this
17 section is a violation of this chapter.

18 **Sec. 8.** RCW 42.56.230 and 2008 c 200 s 5 are each amended to read
19 as follows:

20 The following personal information is exempt from public inspection
21 and copying under this chapter:

22 (1) Personal information in any files maintained for students in
23 public schools, patients or clients of public institutions or public
24 health agencies, or welfare recipients;

25 (2) Personal information in files maintained for employees,
26 appointees, or elected officials of any public agency to the extent
27 that disclosure would violate their right to privacy;

28 (3) Information required of any taxpayer in connection with the
29 assessment or collection of any tax if the disclosure of the
30 information to other persons would (a) be prohibited to such persons by
31 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the
32 taxpayer's right to privacy or result in unfair competitive
33 disadvantage to the taxpayer;

34 (4) Credit card numbers, debit card numbers, electronic check
35 numbers, card expiration dates, or bank or other financial account
36 numbers, except when disclosure is expressly required by or governed by
37 other law; (~~and~~)

1 (5) Personal and financial information related to a small loan or
2 any system of authorizing a small loan in section 6 of this act; and

3 (6) Documents and related materials and scanned images of documents
4 and related materials used to prove identity, age, residential address,
5 social security number, or other personal information required to apply
6 for a driver's license or identicard.

7 NEW SECTION. **Sec. 9.** The director or the director's designee may
8 take the actions necessary to ensure this act is implemented on its
9 effective date.

10 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2010.

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