
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; and adding new sections to chapter
4 31.45 RCW.

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, unincorporated
4 association, or corporation that, for compensation, engages, in whole
5 or in part, in the business of cashing checks, drafts, money orders, or
6 other commercial paper serving the same purpose.

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

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

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

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

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

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

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

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

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

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

37 (16) "Person" means an individual, partnership, association,

1 limited liability company, limited liability partnership, trust,
2 corporation, and any other legal entity.

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

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

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

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

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

18 ~~((22))~~ (21) "Total of payments" means the principal amount of the
19 small loan plus all fees or interest charged on the loan.

20 ~~((23))~~ (22) "Trade secret" means the same as defined in RCW
21 19.108.010.

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

24 (1) No licensee may engage in the business of making small loans
25 without first obtaining a small loan endorsement to its license from
26 the director in accordance with this chapter. An endorsement will be
27 required for each location where a licensee engages in the business of
28 making small loans, but a small loan endorsement may authorize a
29 licensee to make small loans at a location different than the licensed
30 locations where it cashes or sells checks. A licensee may have more
31 than one endorsement.

32 (2) A loan is not due before the time of the borrower's next
33 paycheck. If a borrower is going to receive a paycheck within seven
34 days of taking out the loan, the loan is not due until the borrower's
35 second paycheck following the date of the loan. The termination date
36 of a small loan may not exceed the origination date of that same small
37 loan by more than forty-five days, including weekends and holidays,

1 unless the term of the loan is extended by agreement of both the
2 borrower and the licensee and no additional fee or interest is charged.
3 The maximum principal amount of any small loan, or the outstanding
4 principal balances of all small loans made by ((a)) all licensees to a
5 single borrower at any one time, may not exceed seven hundred dollars.
6 At any time, the combined principal balances of all small loans to a
7 single borrower may not exceed thirty percent of the gross monthly
8 income of the borrower.

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

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

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

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

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

1 (3) A borrower defaults on a payment plan by failing to make two
2 consecutive installment payments. If the borrower defaults on the
3 ~~((payment))~~ installment plan, the licensee may ~~((initiate action to~~
4 ~~collect the total of payments under RCW 31.45.082. The licensee may~~
5 ~~charge the borrower a one-time payment plan default fee of twenty-five~~
6 ~~dollars))~~ collect the entire outstanding amount.

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

12 NEW SECTION. Sec. 4. A new section is added to chapter 31.45 RCW
13 to read as follows:

14 (1) The director may, by contract with a vendor or service provider
15 or otherwise, develop and implement a system by means of which a
16 licensee may determine:

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

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

19 (c) Whether the borrower is eligible for a loan under RCW
20 31.45.073; and

21 (d) Any other information necessary to comply with chapter 31.45
22 RCW.

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

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

28 (b) Secured against public disclosure, tampering, theft, or
29 unauthorized acquisition or use.

30 (3) If the system described in subsection (1) of this section is
31 developed and implemented, a licensee making small loans under chapter
32 31.45 RCW must enter or update the required information in subsection
33 (1) of this section at the time that the small loan transaction is
34 conducted by the licensee.

35 (4) A licensee must continue to enter and update all required
36 information for any loans subject to chapter 31.45 RCW that are
37 outstanding or have not yet expired after the date on which the

1 licensee no longer has the license or small loan endorsement required
2 by this chapter. Within ten business days after ceasing to make loans
3 subject to chapter 31.45 RCW, the licensee must submit a plan for
4 continuing compliance with this subsection to the director for
5 approval. The director must promptly approve or disapprove the plan
6 and may require the licensee to submit a new or modified plan that
7 ensures compliance with this subsection.

8 (5) If the system described in subsection (1) of this section is
9 developed and implemented, the director shall adopt by rule a fee or
10 fees that a vendor or service provider that operates or administers the
11 system may charge a licensee in making a small loan for use of the
12 system described in subsection (1) of this section.

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

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

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 31.45 RCW
20 to read as follows:

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

24 (a) The number of borrowers entered into a payment plan since the
25 effective date of this section;

26 (b) How the number of borrowers in payment plans compares to the
27 number of borrowers in payment plans in years previous to the effective
28 date of this section;

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

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

34 (e) Any other information that the director believes is relevant or
35 useful.

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

1 **Sec. 6.** RCW 42.56.230 and 2008 c 200 s 5 are each amended to read
2 as follows:

3 The following personal information is exempt from public inspection
4 and copying under this chapter:

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

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

11 (3) Information required of any taxpayer in connection with the
12 assessment or collection of any tax if the disclosure of the
13 information to other persons would (a) be prohibited to such persons by
14 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the
15 taxpayer's right to privacy or result in unfair competitive
16 disadvantage to the taxpayer;

17 (4) Credit card numbers, debit card numbers, electronic check
18 numbers, card expiration dates, or bank or other financial account
19 numbers, except when disclosure is expressly required by or governed by
20 other law; (~~and~~)

21 (5) Personal and financial information related to a small loan or
22 any system of authorizing a small loan in section 4 of this act; and

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

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